Jose Ramirez-Salgado CDCR# C-11124
Calipatria State Prison
D2-233-L
P.O. Box 5002
Calipatria CA 92233-5002
Petitioner, In Pro Se

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOSE RAMIREZ-SALGADO,
Petitioner,

Vs.

L.E. SCRIBNER, Warden(A),
Respondent,

JERRY BROWN, Attorney General of California,
Additional Respondent.

CASE NO:_____

MEMORANDUM OF FACTS,
POINTS AND AUTHORITIES
ON HABEAS CORPUS PETITION.

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MEMORANDUM OF FACTS

Petitioner Jose Ramirez-Salgado was born in rural Mexico on April 24, 1960. At the age of Four (4) Petitioner fell out of a tree and landed on his head. This trauma caused brain tissue damage that has caused life long epilepsy and other problems. In 1967 Petitioner's Father passed away after a long illness of the lungs.

In 1970, Petitioner's Mother left him with his Faternal Grandfather while she came to the United States on a Work Visa. For the next twos (2) years, Petitioner lived and worked on his Granfather's ranch/Farm, which was located near San Jose, a small village about sixty (60) miles from Guadalajara, Mexico. While his Mother relocated to San Diego California . Petitioner' Mother became a U.S. Citizen several years later after Petitioner's incarceration.

In late 1972, Petitioner ran away from his Grandfather's Farm to find his Mother and be with her since her job would not allow her to visit and his Grandfather could not afford to leave the farm to visit her. Petitioner hiched rides and other modes of transportation, when his funds would allow all the way to Tijuana at the age of twelve (12), alone. In Tijuana, Petitioner learned how to survive on the streets - getting involved with thriving drug culture there, among other things to survive. Petitioner soon learned how to cross the boarder with out getting caught, and did so to find his Mother in San Diego. But the damage was already done, and it would effect Petitioner's judgements and actions for many years to come. The use of drugs and alcohol to cope with problems, and the use of violence as the rule instead of being the last resort, to establish and protect one's self.

When Petitioner did cross the boarder and finally found his Mother, he was greeted by his Mother and her Boyfriend. A situation he was not prepared for nor expecting. His Grandfather had already informed his Mother of his running away. Like any Parent, She was glad that he was alive, happy to see him, and angry that he had run away, and caused so many people so many sleepless nights of worry. Petitioner's Mother was also upset that Petitioner's illegal entry could cause her to lose her visa and chance to make new life in the U.S. for her family. All of these emotions came

out and confused the Petitioner even more. His Mother's boyfriend did not help matters any by expressing 'Fatherly' concerns and personal concerns of the possibility of Petitioner's Mother suffering deportation due to her son's stupidity. These actions just re-enforced the first impression of anamosity of the Petitioner due to his Mother replacing his Father and him with another man.

Over the next seven (7) years, tensions increased between Petitioner, Petitioner's Mother, Petitioner's Mother's Boyfriend. Every time Petitioner would get to the point that he wanted to hurt his Mother for siding with her boyfriend and not with him, Petitioner would stop a Police Officer and tell him that he was illegally in the country. The Officer would then take him to the boarder, and send him accross. Petitioner would then get back into the strret life to keep alive. Until he would calm down and start missing his Mother enough to cross the boarder once again. Thus a vicious circle developed.

One day Petitioner found a .22 cal. pistol in a paper bag. He decied to keep it and that the next time he returned to Mexico he could show it to a few people, establishing the word that he was packing and could better protect himself. And he could also sell it down there if needed. Life on the strrets is dangerous for a child at any time, but in the 70's Tijuana was a very dangerous place for a child. Petitioner's Mother found the gun and took it.

Petitioner used drugs and alcohol since shortly after arriving in Tijuana the first time. There and in San Diego. This lead of course to more confilicts between Petitioner, His Mother and Her Boyfriend. Causing more retreats to Mexico by Petitioner. On one of these periods of time, Petitioner met a girl and they fell into love and lust. A child was conceived and born from that relationship by the time Petitioner turned eighteen (18). Shortly after his ninteenth (19th) birthday, his girlfriend's parents, convinced her to return to their home in Tijuana, taking Petitioner's and Her child with her.

Petitioner felt the world closing in on him, and turned to heavy drug and alcohol use to cope with it. One day, he remembered the .22 that his Mother had taken from him. While waiting for her to leave the house, Petitioner drank and smoked pot and once his

Mother left for work, Petitioner returned to her house and retrieved the gun from where she had put it. Petitioner then returned to his friend's place and drank some more and did more drugs, trying to passout. This was June 16, 1979, the day that Petitioner ended up committing his commitment offenses. The stress and substance abuse of nearly seven (7) years came to a head, and Petitioner snapped.

After his arrest, the District Attorney's Office conducted indepth interviews and due to the facts that they had, offered the Petitioner a plea bargain for second degree murder with gun use enhancements, with a sentence of ninteen (19) years to life. The minimum ineligibility for parole would expire some where between April and June 17, 1998. And the Petitioner would then be elegible for parole. Petitioner plead guilty to Second Degree Murder and use of a firearm in the commission. The Court accepted the plea and sentenced him 15 to life plus 4 year for the firearm.

PAROLE HEARINGS.

In each of the Parole Board Hearings (BPH), the commissioners have used most of the following reasons at one time or another to deny parole: The number of victums; the victums were vulnerable; callous disregard for human life; drug and alcohol abuse; unstable family life; unstable relationships - with girlfriend and their child; crossing the boarder several times; High custody score; number of CDC-128's and CDC-115's; Failure to learn a vocation; failure to learn better english; Petitioner's parole plans in Mexico are inadequate.

Each Board has refused to take into account the stressors of Petitioner's life that lead unto the crimes; his young age; the situation at the time; Petitioner's epilepsy that precludes him from participating in Vocational Instruction Courses per Prison Policy. That after Petitioner's debriefing and coming to the SNY Program, he had a long period without any write-ups/dicinlinary actions; That through out his incarceration, Petitioner has matured - which lead him to debrief; That the Situation with his Mother and Her Boyfriend, had changed, They got married, and Petitioner accepted the relationship and even became friends with his Step-Father; Petitioner's Grandfather passed away, and left part of the farm to Petitioner, upon his release from prison; That Petitioner's

Mother passed away while on her way to visit him. That after her Death, Petitioner got into trouble for drinking. Petitioner's Mother left him a sizable trust available upon his release from prison and his return to Mexico. That Petitioner has established very close ties with his Family while in prison. That Petitioner has viable and adequate Parole plans for work, living arraingements, and support in Mexico. That Petitioner has the needed skills and experiences for employment and running a farm in Mexico.

The Board also ignors the Psychological report that placed Petitioner as no greater threat to society than anyone else, as long as he avoided gangs, drug use and alcohol use. In San Jose Mexico Drugs and Gangs are not a problem, and that Petitioner has friends and family there to help him stay away from alcohol.

The Boards have told Petitioner that he would have better jobs in Mexico if he learned English better, while ignoring the facts that Petitioner obtained his GED in prison, showing a High School level of English mastery, et al.. That in Mexico, Spanish is the National Language not English. The Board also Clearly ignores the fact the Petitioner has Epilepsy, thus placing him squarly under the protection of ADA. Prison Policy bars Petitioner from taking Vocational Classes due to safety and security of the Institution and such concerns would effect his future employement opportunities in Mexico.

The various Boards have raised concerns about his crossing the boarder as a child. That he would do so again as an adult. They ignore the fact that Petitioner has matured and clearly knows that such action would lead to his incarceration for the rest of his life. Petitioner has spent approximately twenty-nine (29) years in prison, and is not in anyway eager to spend the rest of it in prison.

The Board uses the Crime to justify inegibility, even nine (9) years after the Maximum Inegibility Period for Parole established by the Legislature of California, for that crime.

Even though Petitioner was and has been willing to discuss the crime with the Board, the Board has used the current D.A.'s version of the crimeand the probation report that contradicts the Plea Agreement and Accepted Plea of Petitioner in Court.

STATE HABEAS COURTS

Petitioner sought review of the Parole Board's decisions in the State Courts. In each Court, Petitioner asked for discovery of BPH documents and Attorney's 'Lifer Packet" wich under California laws, belong to the Client. Petitioner also asked for an evidentary hearing in each court. All three state courts refused to grant discovery or an evidenatry hearing. Petitioner also sought the transcripts of the Plea Hearing and Sentenceing Court Hearings to support issues raised. But the Courts refused to do their duty.

Each State Habeas Court denied Petition and the Superior Court of San Diego County was the only expressed opion issued.

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It should be noted that Petitioner received a one year sentence for possession of a weapon by a prisoner while incarcerated and as an participant in prisons' gangs culture.

According to the Minimum Eligible Parole Date setforth by CDCR, See Exhibit H, Petitioner became eligible on May 30, 1992 for parole under the laws of California. Petitioner does not know if this is completely accurate, but will so stipulate at this time that it most likely is. It also includes the one year sentence for the above mentioned offense.

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ISSUES

I

STATE COURTS DEPRIVED PETITIONER OF DUE PROCESS AND EQUAL PROTECTION OF LAW BY REFUSING TO HOLD AN EVIDENTIARY HEARING AND DENYING DISCOVERY

- FACTS -

Petitioner requested evidentiary hearings and discovery of State Prison 'Central File' Documents; BPH appointed attorney's 'Lifer Packet' - documents that BPH issues to counsel for preparation for Parole Hearing; Court's Transcripts of Plea agreement hearing and sentencing; et al.. at each and every level of review. Exhibit 'A', which were ignored by the State Courts. Exhibit 'B'.

The documents requested in the discovery motions setforth facts that prove several of the Habeas Corpus Issues raised before the Court: 1) Ineffective Assistance of Counsel at hearing; 2) the Pre-determination of denial by the Board; 3) that the Board's determinations were not based upon any reliable evidence - nor on any evidence at all; 4) Facts that clearly contradict the holdings/findings of the Board; 5) Five Year postponment for next hearing was retailitory for refusing to sign waiver of hearing; et al..

An evidentary hearing combinded with the discovery materials would have proven the issues that the Board has ignored facts and their own Regulations, State and Federal Laws, Constitutions, and Court Rulings.

- LAWS -

> "(A)s the Supreme Court noted in Miller-el, the state court fact-finding process is undermined where the state court has before it, yet apparently ignores, evidence that supports petitioner's claim. Miller-el 537 US at 346, 123 S.Ct. 1029." Taylor v. Maddox (9th Cir. 2004) 366 F.3d 992, 1001. "Obviously, where the state court's legal error infects the fact-finding process, the resulting factual determination will be unreasonable and no presumption of correctness can attach to it." Taylor, supra, 366 F.3d at 1001.

The Court went on to hold that an evidentiary hearing is required in most cases in the state courts for their decisions to be held "reasonable" under the AEDPA. This view was later adopted and published by the Supreme Court in Evens v. Chavis (2006) ___ U.S. ____, 126 S.Ct. 846.

II

STATE PAROLE BOARD HAVE VIOLATED PETITIONER'S DUE PROCESS AND EQUAL PROTECTION OF LAW, AND CONSTITUTIONALLY PROTECTED LIBERTY INTEREST IN PAROLE.

A

BOARD HAS CONTINUED TO USE THE UNCHANGING FACTS OF THE COMMITMENT OFFENSE TO DENY PAROLE AFTER PETITIONER HAS SERVED THE MINIMUM TERM SET BY LAW.

- FACTS -

Petitioner was sentenced under California Penal Code Sections 187 - Second degree murder, 15 to life; 211 - robbery; 245(a) - assault with a deadly weapon; and 12022.5 - Firearm use enhancement for 4 years. Yeilding a 19 to life sentence issued on November 28, 1979. Even without pre-sentence credits, the maxium minumum for parole ineligiblity expired on November 28, 1999. With the pre-sentence credits, Petitioner became legally eligible for parole in June of 1998, nearly nine years ago.

Yet, the Board continues to rely upon the crime to deny parole, at the November 1, 2005 Parole Hearing, 7 years after the State Legislature's MAX ineligibility period ended. Exhibit C, pp. 27-30.

- LAWS -

On December 22, 1999 the California Attorney General issued Opinion No: 99-322 (82 Ops.Cal.Atty.Gen. 242) concerning life top sentences in California. It clearly states that Legislature set the minium ineligibility period for parole at 15 to life or 25 to life, etc., at the set term of 15 or 25 years, after which the prisoner is considered eligible for parole. Martin v. Marshall ((N.D.Cal. 2006) 431 F.Supp.2d 1038, 1046-47) and In re Lawrence ((C.A.2d 2007) 2007 D.J.DAR. 7363, 7372-74 (Exhibit D)) the courts have held that once a prisoner has served the full minimum term, reliance upon commitment offense to deny parole impinges on the Prisoner's Constitutional Liberty Interest in parole and violates Due Process of both the State's and Federal Constitutions.

In Lawrence, the commitment offense "does not provide "some evidence" () present release would represent an "unreasonable risk" of danger to the community." (at pp 7374.) The Lawrence Court compared numerous commitment offenses of other cases challenging BPH denials to Lawrence's. Their final anylasis is clear- EXCEPT for those rare cases like Charles Manson's - after serving the minium

term set by law, the commitment offense(s) is no longer "some evidence" of future threat to society. Neither the Board, Governor, nor the Courts may utilize such to deny parole suitability.

> "Other than rehabilitation, imprisonment of those who are convicted of committing crimes generally serves and is justified by one or more of three societal goals:
> (1) Retribution - that is, punishment of the offender commensurate with the seriousness of the crime;
> (2) Deterrence of future offenses by the offender and other potential offenders;
> (3) Incapacitation of the offender so she is not free to commit other offenses.
> When the Legislature sets an indeterminate maximum term with a fixed minimum term, the latter can be viewed as setting the period of imprisonment deemed necessary to satisfy the first two purposes, while the justification for continued imprisonment beyond that fixed minimum depends on the need for continued incapacitation of the offender." Lawrence, supra, 2007 D.J.DAR. at pp. 7374-75.

- CONCLUSION -

Since the State Court and even the Attorney General conclude that after the minimum term has been served, relying on the commitment offense to justify denying parole in the majority of parole hearings, violates the letter and intent of the law as well as clearly violates Due Process and Liberty Interests of the Prisoner. It is improper for the Board to deny Petitioner parole based upon his commitment offenses after he has completed the MINIMUM term set by law - 20 years, which expired on or about June 1998. Twenty years after his arrest, since Petitioner did not bail out of jail during the court procedings, and thus earned per-sentence credits.

- B -

THE BPH VIOLATED PETITIONER'S DUE PROCESS RIGHTS BY ARBITRAILY DETERMINING THAT HIS PAROLE PLANS IN MEXICO WHERE NOT VIABLE NOR REALISTIC - THUS NOT SUITABLE FOR PAROLE.

- FACTS -

At the hearing, Petitioner has presented to the Board letters offering housing, jobs, and support by family and friends. Petitioner also provided legal documents showing the his Grandfather left him property (farm) in San Jose Mexico, and that his Mother left him a trust fund that would provide a substantial capital and support upon Petitioner's release and return to Mexico. Exhibit D.

The Board Stated the offers and plans are unrealistict without stating why they are unrealistic. Exhibit C, pp. 27-30. Or how they determined such. The job offers are from businesses in Mexico. The Property documents are official Mexico Government Documents. The Inheritances from Petitioner's Grandfather and Mother are certified. There is absolutely no evidence to the contrary. Yet, the Board quotes 'boiler plate' verbage of 'unrealistic parole plans' without any facts to support it.

- LAW -

15 CCR Section 2402 'Determination of Suitability' subsection (d) 'cincumstances tending to show suitability" (8) 'understanding and plans for future':"The prisoner has made realistic plans for release or has developed marketable skills that can be put to use upon release."

> "The subsection does not require that a prisoner have viable parole plans in the United States. Petitioner, ..., has realistic parole plans in Mexico. He has at least two job offers and a place to live." Martin v. Marshall (N.D.Cal. 2006) 431 F.Supp.2d 1038, 1046.

Like Martin, Petitioner has realistic plans in Mexico. Unlike Martin, Petitioner has both land and money in Mexico upon release. Outside of 'boiler-plate" verbage, the Board has no fact that Petitioner"s plans are not viable and realistic, what so ever.

The Board stated that the parole plans were unrealistic "in that he does not have acceptable employment plans..." What? A job offer to do painting is unacceptable? Do they think that Mexicans live in un-painted hovals? Owning and operating a farm in Mexico is not possible or feasable? Are they racist or just ignorant???? Do they beleive that over fifty-thousand U.S. dollars is worth over a half-million pesos, will not provide adequate to support the Petitioner until he can get the farm running at a profit?

No evidence that Petitioner's plans are unfeasable nor unrealistic were presented to the Board. None of the Board have any professional knowledge of economic of Mexico, that they could refer to. Their 'boiler-plate" response is not based upon any evidence or factual information presented at the hearing. Thus, clearly violates Due Process and the laws governing parole hearings.

- C -

THE BOARD VIOLATED PETITIONER'S CIVIL RIGHTS UNDER THE ADA AND CONSTITUTIONS BY HOLDING PETITIONER RESPONSABLE FOR CDCR POLICIES THAT KEEP PRISONERS WITH SEIZURES FROM ATTENDING VOCATIONAL TRAINING PROGRAMS. THUS UNSUITABLE FOR PAROLE.

- FACT -

At each Board hearing the fact that Petitioner suffers from epilepsy is admitted by the Board. Yet, at each hearing, the Board states that Petitioner has failed to obtain Vocational Trainimg, thus unacceptable for parole. At each hearing, Petitioner has tried to have Board appointed Counsel introduce the CDCR and Prison's policies that exclude from vocational classes, those with any types of seizure disorders. Board appointed Counsel has refused each time, claiming that the Board already knows this.

- LAWS -

> "Concluding that Congress did in fact liken disability discrmination to racial discrimination, we held that the ADA applies to State Correctional Systems. Id. The same holds true in the parole context: since a parole board may not deny African Americans consideration for parole because of their race, and since Congress thinks that discriminating against a disabled person is like Discriminating against an African American, the parole board may not deny a disabled person consideration for parole because of his disability." Thompson v. Davis (9th Cal. 2002) 282 F.3d 780, 786.

The Thompson Court went on to quote Supreme Court case law that clearly authorizes and supports their findings.

15 CCR Sect. 2402(d)(8) States: "The prisoner has made realistic plans for release or has developed marketable skills ...." And as shown in "B" Petitioner has realistic plans for release, even if the Board cites 'boiler-plate' nonsense to say that he doesn't. It is Clear by the physical evidence that the Prison has a legitamit reason to keep inmates with seizures from Vocational Training in many incidencs, to redue the chances for sever injury to the inmate as well as others. It is also clearly shown that the Board relies on 'boiler-plate' verbage that is not supported by evidence or law.

To tell the prisoner to get a vocation while knowing that the policies forbid that prisoner from getting such is 'catch-22' situation. It cannot be done and violates ADA and Due Process.

D

BOARD CONSIDERS CRIME TO BE ESPECIALLY GRAVE, HEINOUS, ATROCIOUS AND INEXPLICTABLE FOR A SECOND DEGREE MURDER WITHOUT STATING ANY FACTS NOR EVIDENCE TO SUPPORT THEIR BOILER PLATE CATCH PHRASES.

As shown in the transcripts of the Board Hearing, the Board clearly makes use of boiler plate catch phrases through out the hearing without ever pointing to any sufficient evidence nor any comparison to other second degree murders as required by regulations. Exhibit C, espc. pp. 27-30.

- LAWS -

The California Court of Appeal for the Sixth District found in the case of In re Smith ((CA6th. 2003) 114 Cal.App.4th 343, 7 Cal.Rptr.3d 655) the following:

> "Second degree murder requires express or implied malice.... For this reason, it can reasonably be said that all second degree murders by definition involve some callousness.... As noted, however, parole is the rule, rather than the exception, and a conviction for second degree murder does not automatically render one unsuitable." 114 C.A.4th at pp. 366.

In a very detailed evidentary hearing by the Superior Court of California, for the County of Santa Clara, in the case of In re Criscione, Exhibit E - Findings and Order, Case No: 71614, dated August 30, 2007. Shows that the Board, in 100% of the hearings reviewed found the crimes to be especially atrocious, heinous, or callous. At pp. 9. On pages 12-13, the Court pointed out that the term "especially" can not possibly apply in 100% of cases, "yet that is precisely how it has been applied by the Board." The Court goes on to point out that there is something definately wrong where the board forces every crime into their catch phrases for denial. See pp. 26-30. Under the ADEPA the findings are binding on the court.

Rosenkrantz v. Marshall (C.D.Cal. 2006) 444 F.Supp.2d 1063:

> "As the California Courts have concluded, an "inexplicable motive" is "one that is unexplained or unintelligible, as where the commitment offense does not appear to be related to the conduct of the victim and has no other discernable purpose." (Citation.) To call Petitioner's crime "inexplicable," as the BPT has, contradicts all of the evidence in the record. In fact,..., Petitioner's crime was the result of significant emotional stress in his life, a factor that actually weighs in favor of ... parole suitablility." at pp. 1082.

> "Second, in this case, the circumstances of Petitioner's crime do not amount to some evidence supporting the conclusion that Petitioner poses an unreasonable risk of danger if released. As discussed, "(i)n the parole context, the requirements of Due Process are met if some evidence supports the decision." Significantly, the evidence underlying the decision must be supported by "some indicia of reliability." (Citations.) Otherwise, it does not constitute "some evidence."" Rosenkrantz, supra, at pp. 1083.

As it will be discused in Subsection 'E', next, Petitioner was under a great deal of emmotional stress at the time of the crime. He had just turned 19, lost his Girlfriend and their Child, to her Parents, and had had seven years of termole in his family life as well as heavy drug and alcohol abuse for over six years. This is what caused the rampage. Clearly explaining the grounds for the crimes. A child strikes out without regard to whom it hurts.

The victim that died, exited his home, turning on the poarch light and slamming the door, while yelling. This startaled an emmotionally upset child, who responded by firing a single shot towards the suppnising noise, and inadvertantly killing an innocent person.

Yet, the Board, ignores this clear evidence with each of its standard 'boiler plate" verbage it uses to justify it's denial of parole suitablity. Just claiming that there is no explination for a crime, does not actuall proves that there is no reason for it. And YES, the loss of life is exceptionally bad and cruel to his family. And deserves strong condemnation. But, as the evidence shows to be true, Petitioner did not inflict this pain and suffering intentionally. He did not seek out the victim to kill. Had the victim, not exited his home in such a loud and startaling way, Petitioner would not have reacted in the manner that he did.

15 CCR sect. 2402(c)(1) Commitment Offense:

> "The prisoner committed the offense in an especially heinous, atrocious or cruel mammer. The factors to be considered include: (A) Multiple victims were attacked, injured or killed in the same or separate incidents. (B) The offense was carried out in a dispassionate and calculated manmer, such as an excution-style murder. (C) The victim was abused, defiled or mutilated during or after the offense. (D) The offense was carried out in a manner which demonstrates an exceptionally calous disregard for human suffering. (E) The motive for the crime is inexplicable or very trivial in relation to the offense."

As held by the Criscione Court, it is very easy for the Board to twist the facts of every case before it to fit these criteria, even when it clearly does not apply. The Smith Court stated that ALL second degree murders involve some callousness. And Rosenkrantz Court explained that "an inexplicable motive" is one that is not explained and is not related to the actions of the victim.

Here, contrary to the State's wishes and the Victims Family, the evidence that was before the San Diego's D.A. back in 1979 shows that if the victim had not made the ruckus that he did, the Petitioner would not have fired that fatal shot. Yes, the petitioner was acting recklessly and indifferent to the feelings of others. But, He had reached the breaking point and had snapped. The D.A. knew this and knew under the laws at the time, that the Petitioner would have had a good chance at trial to prove mental incompetence and unconciousness due to voluntary intoxication that would have negated malice under then Penal Code Sections 22 and 25; CALJIC 4.02 Insanity instructions based at the time on Model Penal Code Sect. 4.01, according to People v. Drew ((1978) 22 Cal.3d 333, 149 Cal.Rptr. 275, 583 P.2d 1318) where the California High Court abolished the M'Naghten test in favor of M.P.C.'s test. Which with Petitioner's epilepsy caused by head trauma, would have clearly negated expressed and implied malice required for second degree murder.

All of these facts were previously acknowledged in open court during plea bargain hearing and sentencing. Which is why the State Courts refused to grant discovery of the transcripts.

E

THE BOARD IGNORS OR MISSUSES EVIDENCE AND FACTS THAT TEND TO SHOW SUITABILITY FOR PAROLE IN ORDER TO DENY PAROLE.

- FACTS -

The Board has repeatedly pointed to Petitioner's past unstable relationships with family and his ex-girlfriend prior to the commission of the offense as reason for the finding of unsuitability for parole. Exhibit C, pp. 27-30. 15 CCR Section 2402(c)(3). Without stating how such old news and very outdated actions of an adolescent has any bearing twenty plus years later.

Petitioner from the early age of ten was a product of a broken home. His Father passed away after a long illness and then his Mother leaves him to go to another country. At twelve, he left his Grandfather's farm to find his Mother. He lived on the streets of Tijuana until he could find a way across the boarder. He finds his Mother only to find her dating another man. This unstable situation caused emmotional stress, confusion, anger, resentment, etc.. Drugs and Alcohol became a daily escape. At ninteen, his girlfriend and their child returned to her parents home, at the urgings of her parents.

For the Board to hold such information as grounds of Petitioner's present unsuitability instead of evidence of extream emmotional stress that likely will not re-occure (15 CCR Sect. 2402(d)(4)), flies in the face of reality. They clearly ignore the fact that since his incarceration, Petitioner has changed his relationship with his Mother, her Husband, and his family. The changes have brought stability (15 CCR Sect. 2402(d)(2)) to this relationship. The Board insinuated that Petitioner should try to find his Ex-Girlfriend and Child, and disrupte their lives to prove to the Board that he has MATURED. That really sounds mature and adultlike.

- LAWS -

"The susceptability of juveniles to immuture and irresponsible behavior means "their irresposible conduct is not as morally reprehensable as that of an adult." Thompson (v. Oklahoma (1988) 487 US 815, 835). Their own vulnerability and comparative lack of control over their immediate surroundings means juveniles have a greater claim that adults to be forgiven for failing to escape negative influences in their whole environment. See Standford (v. Kentucky (1989) 492 US 361, 395) .... The reality that juveniles still struggle to define their identity means it is less suportableto conclude that even a heinous crime committed by a juvenile is evidence of irretrievable deprived character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed. Indeed, "(t)he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside." Johnson (v. Texas (1993) 509 US 350, 368)." Rosenkrantz v. Marshall, Supra, 444 F.Supp. 2d at pp 1085.

In footnote 17 of Rosenkrantz, on pp. 1085, refers to a publication of materials on adolescent behavor that explains that "the conventional view is that "adolescence is roughly synonymous with teenager, or ages 13-19,"" but that "many scholars argue that adolescence begins at approximately age 10 and does not end until early 20's.""

Petitioner was just barily 19 at the commission of his crimes. He had spent over nine years in child hell. Losing his father, his Mother leaving him behind, etc.. Yes an ADULT would have had a better chance of understanding it all. An adult mostlikely would have not done what he did. For the Board to expect an adolescent to act like an adult and to hold Petitioner to such a misguided and improper standard in order to deny him parole, violates Petitioner's Due Process Rights and Liberty interrest in Parole.

The Parole Board refered to a 2002 Psyc. Report which states that Petitioner is no more of a risk to society as anyone already on the streets. All he has to do is refrain from drugs and alcohol as well as gangs. Yet, the Board ingoners this professional's report in favor of it's own twisted views of the facts, to deny parole. BOILER PLATE VERBAGE not supported by the evidence.

F

THE BOARD IS REQUIRED BY LAW
TO FOLLOW THE SAME LAWS, RULES AND
REGULATIONS AS THE SENTENCING COURT DOES.

- FACTS -

Penal Code Section 3041(a) clearly states that the Parole Board is to abideby the same laws, rules, guidelines and regulations that the Sentencing Court MUST abide by. Yet, it does not do so. It repeatedly relys upon allged facts and evidence (other than prison conduct) that has never been before the jury nor admitted as true by the Prisoner in court. In Petitioner's case they used claims made by the state for grounds to deny parole (Exhibit C, pp. 27-30) and set the next hearing date five years when the last parole hearing was only set for two years. The D.A.'S Office issued a Plea Bargain for Second Degree Murder, et al., yet, at each and every hearing claimed facts never admitted to by Petitioner in the agreement mor

proven to the Trial Court and/or the Sentencing Court as required by law.

The Board uses a probation report that is permitted to contain hearsay, dismissed charges, facts not proven to a jury nor admitted as true by the Defendant. It has conclusions of an over-worked State employee based upon their limited investigation and hand-written notes. Many Courts have raised concern over the inherant problems of probation reports containing materials normally not permitted into court by law and it's inherant misuse of false information.

- LAWS -

Penal Code section 1192.2 states that a defendant cannot be punished for a crime not sepecified in a plea agreement. Jones v. United States ((1999) 526 US. 227, 243) the High Court held the limit on the State's authority to reallocate the traditional burdens of proof:

> "The Constitution safeguards that figure in our analysis concern not the identity of the elements defining criminal liability but only the required procedures for finding facts that determine the maximum possible punishment; these are the safeguards going to the formality of notice, the identity of the factfinders, and the burden of proof." Jones, supra, 526 US at pp. 243, n6.

In Apprendi v. New Jersey ((2000) 530 US 466) the High Court stated:

> "Since Winship, we have made clear ... that Winship's due process and associated jury protections extend, to some degree, "to the determinations that (go) not to a defendant's guilt or innocence, but simply to the length of his sentence." 530 US at pp. 484. "Our rule ensures that a state is obliged "to make its choices concerning the substantive context of its criminal laws with full awareness of the consequences, unable to mask substantive policy choices" of exposing all who are convicted to the maximum sentence it provides." 530 US at 489, n.16. "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the statutory maximun must be submitted to a jury and proved beyond a reasonable doubt. ..."(I)t is unconstitutional for a legislature to remove from the jury the assessment of facts that increases the prescribed range of penalities to which a criminal defendant is exposed. It is equally clear that such facts must be established by proof beyond a reasonable doubt." (Citaitions.)" 530 US at pp. 489.

In Issue II(A), pp. 7 herein, The state has determinied that the maximum ineligibility period for a indeterminate life sentence is the fixed term set by legislature.

"A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgement and determine punishment." Boykin v. Alabama ((1969) 395 US 238, 242.). "(A) statement in which the defendant 'disclos(es) his guilt of the charged offense(s) and which exclud(es) the possibility of reasonable inference to the contrary.' (Citations.)." People v. Kilpatrick (CA3d 1980) 105 Cal. App.3d 401, 413, 164 Cal.Rptr. 249, 256. "It is impossible to imagine prosecuting authorities would have made such an offer if they believed that they could show (defendant) acted (as now claimed at the BPH hearing). More importantly, the Board's finding that (defendant) acted in such a manner files in the face of the findings ...." In re Scott (2004) 119 Cal.App.4th 871, 15 Cal.Rptr.3d 32, 45. "A guilty plea "admits every element of the crime charged" (citation) and is a legal equivalent of a verdict (cite) and is tantamount to a finding (by a jury). (Citation.)" People v. Wallace (2004) 33 Cal.4th 738, 93 P.3d 1037, 16 Cal. Rptr.3d 96, 104. "A plea agreement is a contract; the government is held to the literal terms of the agreement." United States v. Johnson (CA 9th Cir. 1999) 187 F.3d 1129, 1134.

"Since Winship, we have made clear ... that Winship's due process and associated jury protections extend, to some degree, "to determinations that (go) not only to a defendant's guilt or innocence, but simply to the length of his sentence." Almendarez-Torres v. United States (1998) 523 US 224, 251. Apprendi v. New Jersey (2000) 530 US 466, 484. "(W)e acknowledged that criminal law "is concerned not only with guilt or innocence in the abstract, but also with the degree of criminal culpablity" assessed." Mullaney v. Wilbur (1975) 421 US 684, 697-98. Apprendi, supra, 530 US 466, 485.

Before the pronouncement of judgement in felony cases, the parties are entitled to a hearing to present evidence on factors in agrivation and mitigation affecting the sentence, before the court. Penal Code Sections 1170(b) & 1204; Calf. Rules of Court Rules 421, 423. Information included in the probation report must have some substantial basis for believing the information is accurate and reliable. People v. Calloway ((1974) 37 Cal.App.3d 905, 908). The defendant does not have the right to cross-examine the probation officer who made the report. People v. Arbuckle (1978) 22 Cal.3d 749, 754. Hearsay is admissible in the probation report. People v. Valdivia (1960) 182 Cal.App.2d 145; CA R of Ct. R 411.5. Witnesses's conclusory statements are also admissible. People v. Warren (1959) 175 Cal.App.2d 233. It may also include dismissed counts and cases. People v. Harvey (1979) 25 Cal.3d

754, 758. Also, counts that the defendant was acquitted of may be encluded. People v. Lewis (1991) 229 Cal.App.3d 259.

The High Court vacated a death penality due to the court using a factor in agiravation that was not found true by the jury in Sochor v. Florida ((1992) 504 US 527, 540. If the state makes an increase in a defendant's sentence contingent on the finding of a fact, that fact must be found true by the jury beyond a reasonable doubt. United States v. Booker (2005) 543 US 220, 125 S.Ct. 738, 749. Ring v. Arizona (2002) 536 US 584, 602, The Sixth Amendment is very clear, any sentencing scheme that allows a finding of fact that is essential to a defendant's sentence to be found by anyone other than ajury violates the defendant's rights to have the jury find the facts beyond a reasonable doubt. Booker, supra, 125 S.Ct. at pp. 2537. Judges have long looked to the report complied by a probation officer, who the judge thinks more likely to have gotten the facts right than a jury, to determine the sentence. Booker, supra, 125 S.Ct. at 760. Blakely v. Washington (2004) 542 U.S. 296, 124 SCT ___ at 2542. Every defendant has the right to insist that the State prove to a jury all the facts legally essential to the punishment. Blakely, supra, 124 S.Ct. at 2543.

Since the High Courts of both the United States and California have held that a plea of guilt, such as given in a plea agreement, is more than just an admission - it is a conviction that excludes the possiblity of inferences to the contrary, which admits all of the facts listed in the agreement, IT IS ONLY those facts that can be used to determine the defendant's sentence, per the Sixth Amendment. The probation report can have any facts not proven to a jury, encluding those facts found not true by the jury(See Lewis, supra.), the probation report fails the standard set by Winship, and its prodigy. The use by the Board, clearly violates Petitioner's Constitutional Rights to have ALL of the factors proven in court - either by jury or his own admission of guilt, since the Law requires the Board to obey the same Laws, Rules, and Regulations that are binding on the Sentencing Court. Penal Code Section 3041(a). And the State cannot do a run'around the Constitution and it's own laws by masking policy choices to allow the Board to do so.

- CONCLUSION -

It is clear that the Board does not follow the laws of the State, let alone the laws of the Country, in conducting parole hearings. They ignore Court Orders on a regular basis, as if they never were issued. And in the case of the Petitioner, They have used the facts of the crime past the time permited by Legislature. Petitioner's crime carries a 15 to life, plus the gun use enhancement that brings the minium ineligibility for parole based on the crime to 20 years. Which expired in 1998, at the latest.

The Board refuses to accept Reasonalble Parole Plans in Mexico. Facts that Petitioner has or will have upon release, land, money, friends and family support, and work, is ignored without any evidence to the contrary by the Board. The Board ignores the facts that Petitioner was an adolescence under an enormus amount of stress at the time of the crime. That since his incarceration Petitioner has matured and given up those childhood recklessness and attitudes. They point to his RVR's while incarcerated. Yet, ignore the fact, that Petitioner gave up the life style of gangs and since that time, has only had a couple of rule violations in eleven (11) years, compared to the numerous ones prior to debriefing.

Then the Board tells Petitioner to get a vocation - while knowing the CDCR will not permit Petitioner to attend Vocational Training due to his Epilepsy. Basically violating the ADA. It also holds Petitioner's prior drug addiction as grounds for denial even though the ADA forbids the State for holding 'former' drug use as grounds for denial. Since it is considered a disability.

The Board further added insult to injury by setting the next hearing date five (5) years away, because the Petitioner would not sign a waiver for the hearing, in exchange for a two year denial. Even though it was ordered by the Superior Court of California, Marin Count to stop such illegal practices. It clearly shows that the Board was perjudice and had predetermined their decision prior to the hearing, in clear violation of Petitioner's Due Process Rigths, and the laws governing the Board.

Therefore Petitioner believes that he has Never received a Constitutionally adequate Board Hearing on the Proven Facts of his Case. Thus should be granted parole and allowed to return HOME to Mexico to live as a productive citizen.

III.

INEFFECTIVE ASSISTANCE OF COUNSEL, BEFORE, DURING AND AFTER THE BPH BOARD HEARING CA.P.C. SECTIONS 3041.5 AND 3041.7; TITLE 15, SECTION 2256. U.S. CONSTITUTION FIFTH AMENDMENT.

- FACTS -

Upon being notified by BPH of the name and address of appointed counsel for the hearing, Petitioner wrote and sent the following items to counsel for consideration and introduction to the Board: A) Five page letter giving numerous cases that would support motions to the Board to disregard the unsupported claims made by the D.A. and law enforcement; B) Three page parole plan; C) A seven page statement to the Board; D) A letter to the Board; and E) A hand copied duplication of a CDCR Memorandum. See Exhibit F.

At the attorney - client meeting , Ms. Ludwig stated that she had received an envelope from the Petitioner, but had not opened it. Counsel explained that she had only read the BPT Summery Page of the last Board Hearing just prior to meeting with Petitioner. Ms. Ludwig did not want to review any of the facts and any other issues for the hearing. Ms. Ludwig stated that the Board wanted her to have Petitioner sign a waiver of unsuitability in exchange for a Board Hearing set in TWO YEARS. This waiver would allow the Board not to hold an actual hearing with the Petitioner. Counsel stated that the Board had already determined that Petitioner was not eligable for a parole date, and did not want to waist time on his hearing.

Counsel explained that if Petitioner refused to sign the waiver, the Board would set his next hearing date five yeans away. Which is the maximum time permitted by law.

Petitioner stated that he didnot believe that he was unsuitable for parole and would not sign a waiver saying so. That He wanted to present his case for parole to the Board. Ms. Ludwig stated that it was already decied that if he didnot sign the waiver, the Board would set his next hearing five years away instead of two years offered if he signed the waiver.

Petitioner asked counsel to prepare for the hearing and have motions ready to challenge the claims made by the D.A. and law enforcement. Petitioner also requested Counsel to Move that CDCR conduct a "pre-Board audit" as required by CDCR D.O.M. Section 7404.3.2. Counsel refused these requests, stating that it would

a waste of her time since the Board had already decieded not to grant suitability.

The 'pre-Board audit' would require up-dated materials on Psych-Reports, In Custody behavior, et al.. Without such up-dated materials, it has been determined that the Board cannot conduct a proper hearing. Thus is required before each hearing. Counsel is suppose to make sure that CDCR does this audit. As it was, the Board relied on information that was clearly out-dated, and on incomplete/inaccurate information on Rule Violation Reports. Some of which had been adjudicated in Petitioner's favor and dismissed. But, due to the lack of a Pre-Hearing audit, were left in the file and not clarified as being adjudicated in any manner. See Exhibit C, Board Transcripts, where these were repeatedly mentioned.

At the Hearing, Counsel asked Petitioner to reconsider the waiver, stating that the Board didnot want to see him at all. That they would deny parole and set a date five years away, if he refused to waive his rights. At the hearing, Petitioner raised the issue of Counsel trying to pressure him into waiving his rights. Exhibit C, pp. 24:24-25:10. Counsel did not deny it, but stated that Petitioner did have the right to be present and present his case for parole.

The Board found that nothing had been updated from the 2002 and eariler hearings. Per Board policies, this should have stopped the hearing with the orders from the Board to CDCR to do a 'Pre-Hearing audit' as required by regulations and Due Process. But, the Board forged ahead with out-dated information, ignoring their own policies and numerous Court Orders regarding this issue.

Counsel did not object to this nor to the use of out-dated data. Counsel had refused to prepare for the hearing by reviewing the Central File, as required to do to properly perpare for the hearing and to have inaccracies corrected prior to the hearing. Counsel did not move the Board to postpone the hearing until Prison could do the Pre-hearing audit. Division 2 of the Title 15 CCR, claerly state the duties of parole hearing counsel. Counsel did not abid by these rules and regulations. To be on the Boards' approved counsel list for appointments, Counsel must show knowledge of the rules and regulations. Thus knows her duties to Petitioner.

After the hearing, Petitioner asked Counsel for the Parole Packet that the BPT had issued to her to prepare for the hearing and all documents sent to her on the behalf of and by Petitioner. She refused. Petitioner then made a formal written request under the State Bar's Rules of Professional Conduct, Rule 3-700(D)(1). Which state that the material is the property of Petitioner and must be turned over tho client upon request. No response from counsel. The State Bar was sent a complaint and failed to act upon it. At each level of State Habeas Court Proceedings, Petitioner asked the Court for discovery orders for these documents. The Courts denied each request and stated that the Petitioner had failed to make a prema facia case.

Ms. Ludwig represented many inmates before the board on November 01, 2005, along with Petitioner, Those that signed the waivers received a two year postponement to the next hearing. Those that did not sign the waivers, received a five year post-ponement. Petitioner asked the State Habeas Courts for discovery of such Board documents, and was denied. Petitioner asked Counsel for this information, and was ignored. Such a request would not violate any attorney-client confidentaility since no names would have been given. Just the numbers.

- LAWS -

Under CA.P.C. Sections 3041.5 and 3041.7; Title 15, CCR Section 2256, Petitioner has the statutory right to counsel at all parole hearings. The U.S. Constitution Fifth Amendment requires the effective assistance of counsel, when the right to counsel attaches. Title 8 U.S.C. Section 1362, grants aliens the statutory right to counsel in deportation hearings and the Court has held that such statutory right to counsel is governed by the Fifth Amendment. Reno v. Flores (1993) 507 US 292, 306, 123 L.Ed.2d 1.

California State Bar's Rules of Professional Conduct, Rule 3-110(C) requires counsel to have the necessary learning and skill to take a client's case. Rule 3-700 requires counsel to protect the future rights by turning over the client files to the client upon the request of the client.

Counsel is required to adequately investigate the case. In re Marquez ((1992) 1 Cal.4th 584, 596, 3 Cal.Rptr.2d 727. Failure to

challenge evidence. People v. Ledesma (1987) 43 Cal.4d 171, 233 Cal.Rptr. 404. Failure to investigate and/or object to the use of unproven facts/evidence presented by the State. Jones v. United States, supra, 530 US at 489; Et alli.

> "Ineffective assistance of counsel exists where, as a result of counsel's actions (or the lack thereof), 'the proceedings was so fundamentally unfair that the (inmate) was prevented from reasonably presenting his case.'" Saakian v. INS (CA 1st Cir. 2001) 252 F.3d 21, 25.

See also, People v. Bunyard (1988) 45 Cal.3d 1189, 1215; 249 Cal.Rptr. 71; Strickland v. Washington (1984) 466 US 668, 688, 693, 104 SCt 2052, 80 LEd2d 674.

Counsel refused/failed to have CDCR update Petitioner's files as required for and by the BHP for the proper hearing of an inmates' eligability for parole suitability. While it could be argued that counsel knew that no matter what she did to prepare for the Board Hearing, the Board had already predetermined the outcome of the hearing in advance. Yet, that is clear grounds for counsel to make a solid record at the hearing for the future review by the Courts. Since the predetermination of the outcome of a hearing by the Board is forbidden by regulations and statutes, as well as Petitioner's Due Process rights to a fair and impartial hearing.

The only thing that Counsel did do at the Board Hearing was to assure her own continued appointments to inmates as counsel by the Board. Thus securing her paycheck from them.

- CONCLUSION -

Petitioner did not receive effective assistance of counsel, before, at, and afterwards. Counsel knew she was ineffective and was not obeying her legal duties to the clients she was appointed to provide adequate counsel for. Thus, she refused to obey law that requires her to turn over client files to the client. The Board knows that this counsel will not be a advocate for the inmates she represents, thus keeps appointing her. And worst of all, the State Habeas Courts, have choosen to turn a blind eye to these facts - allowing the Board to appoint counsel whos only intentions is to get reappointed to other Hearings and make more money. Even to the point of trying to strip away the Due Process and Fair Hearing Rights of the Prisoner, with the Board.

IV.

PETITIONER HAS A CONSTITUTIONALLY PROTECTED LIBERTY INTEREST IN PAROLE.

Petitioner has exceeded the Statutory maximum ineligibility period set by law for second degree murder and weapon use determinate sentence that gave a total of 20 to life by June 1998. At that point, by California Laws, Petitioner became eligable for parole. Unless, the Board could point to facts admitted to by Petitioner at the plea agreement Hearing, that proves that the offense(s) were especially heinous, attrocious or cruel. In comparision to other Second degree murders.

The Board did not do this, and unless they can specify the actual factors and evidence relied upon to support this findings, of especially ..., the Board cannot parot the words and justify denial. The Board is also required to weigh all evidence in both tending to show unsuitability as well as suitability. But in the case of the Petitioner, the Board ignored evidence of suitability, and at times, used the evidence of suitability to find unsuitability.

Like, that Petitioner was having family problems, See Memorandum of Facts, pp. 1-4, herein. These problems of an adolescent lead to the commission of the crimes. Since the Petitioner has reconciled wiht his Mother (before her death) and Her Husband, which shows that the termole of childhood has passed, and that Petitioner has grown up emmotionally. That such emmotional stress is unlikely to reoccure.

Likewise, the Board uses his choice to not contact his ex-girlfriend and their child, as grounds for denial. Do they want Petitioner to disrupt these peoples lives in order to prove that he is eligible for parole?

The Board also points to the numerous CDCR-115's and 128's Petitioner received while associated with prison gangs. While ignoring facts that since his debriefing, he has only had a couple of write-ups, which occured after his Mother's death while coming to visit him at Calipatria State Prison. Very few prisoners can get through their terms without some kind of write-ups. They are the exception, not the rule. Prior to 1984 Petitioner had 19 CDCR-115's. After that he had 7 CDCR-115's. For nearly 10 years, Petitioner had NO CDCR-115's. And some of the CDCR-115's in 2004, were dismissed or adjudicated in his favor, but not excised from the file.

See Exhibit G, section D of the Life Prisoner Evaluation. For the complete run-down of disciplinary history.

The Board also held that Petitioner needs more therapy to become eligable for parole. Even though the Psychirist Report says the opposite. That Petitioner is no more of a risk to society as anyone already out there. As long as he stays away from gangs, drugs and alcohol. He has both Family and Friends to assist and support him in this requirement.

The Board held that he needs more education and training to be eligable. Ignoring the fact that Petitioner has a GED and has repeatedly tested with a 12.6 GPL. Exhibit G, section B. That per CDCR and Prison Policy, Petitioner cannot particapate in Vocational training classes due to his epilepsy.

ETC. ETC. ETC....

- LAWS -

In the case of In re Scott ((CA 1st Dist. 2004) 119 Cal.App.4th 871, 15 Cal.Rptr.3d 32) the court held the following to be true:

1. Parole is the rule, not the exception;
2. Conviction for second degree murder does not render one unsuitable;
3. To demonstrate "an exceptionally callous disregard for human suffering" the commission must have been more violent than ordinarily shown for second degree murder;
4. An "inexplicable motive" is one that is unexplained or unintelligible;
5. While the Board holds broad discretion over parole suitability, it is not complete, IT MUST ABIDE by the laws;
6. Facts relied upon by the Board cannot differ from those established in the Court Room - about the circumstances of crime(s) and the situations surrounding the commission;
7. ET ALLI....

In the Case of In re Criscione (Exhibit E) the Court held that:

"As noted supra, a reason the proof in this case irrefutably establishes constitutional violations is because the Board does not, in actual fact, operate within the limiting construction of the regulations." at pp. 26.

"This practice results in violence to the requirements of due process and individualized consideration which are paramount to the proper exercise of its broad discretion." at pp. 27.

"The PC Section 3041(b) exception to the rule can only be invoked when the "gravity of the current convicted offense or offenses, or the timing and gravity of current or past offense or offenses, is such that consideration of public safety requires a more lengthy period of incarceration for this individual." The word "gravity" is a directive for comparison just as "more lengthy" indicates a deviation from the norm." at pp. 28.

> "By simple definition the term "especially" as contained in section 2402(c)(1) cannot possibly apply in 100% of cases, yet that is precisely how it has been applied by the Board. As pointed out by the Second District Court of Appeal, not every murder can be found to be "atrocious, heinous, or callous" or the equivalent without "doing violence" to the requirements of due process. (In re Lawrence (2007) 150 Cal.App.4th 1511, 1557.) This is precisely what has occured here, where the evidence shows that the determinations of the Board in this regard are made not on the basis of detailed guidelines and individualized consideration, but rather through the use of all encompassing catch phrases gleaned from the regulations." at pp. 12-13.

In the In re Rutherford/now Lugo case before the Superior Court of California for Marin County (Case No: SC 135399A) a Class Action suit against the Board, Honorable Judge Verna A. Adams, has found that the Board not only overdue in having hearings for lifers, but had instigated an illegal method to reduce the back-log by having Lifers sign Waivers in exchange for a two year postponement, and for those Lifers that refused to sign such waivers, they were given upto five years before the next hearing even when nothing had occured since the prior hearing to justify such a drastic delay.

> At the August 31, 2004 hearing, the Respondents stated:
> "(T)hey will comply with the mandate of PC Section 3041.5 only if and when an inmate seeks and obtains relief in habeas corpus; otherwise, Respondents conceded that they will continue to do what they have done in the past,..." Court Order Dated February 15, 2006, pp.4, Exhibit I.

In March 23, 2006 the Board agreed to stipulated Procedures to correct their 'procedures'. Yet to this dated, have done everything but follow them. It is now on appeal. But the findings of the Superior Court is not being challenged, just the policy to correct the problems.

As shown in Exhibit H, BPT Life Prisoner Decision Face Sheet, The Board fully expected Petitioner to sign the "unsuitability" waiver form 1001A, prior to the hearing. They had already marked the box for it, and had to change it. This shows that it pre-determined to deny parole and that they punished Petitioner for excercising his legal rights to present his case to the Board.

Prisoners have the Liberty interest in Parole and the Due Process rights to a fair and impartial Parole Hearing. In re Lowe (CA 6th Dist. 2005) 130 Cal.App.4th 1405, 1421; In re DeLuna (CA 6th Dist. 2005) 126 Cal.App.4th 585, 591; In re Rosenkrantz

(2002) 29 Cal.4th 616, 654; et al..

The board had no reasonable grounds to reject the findings of the psychologist, and by law are required to accept the findings. In re Smith (2003) 114 Cal.App.4th 343, 369. Even with an old report compiled for the previous Board Hearing. The report clearly states that the Petitioner is not anymore of a danger than any other citizen on the streets is.

> "(C)rimes have little, if any, predictive value for future criminality. Simply from the passing of time, crimes almost 20 years ago have lost much of their usefulness in foreseeing the likelihood of future offenses than if he had commited them five of ten years ago." (In re Lee (2006) 143 Cal.App.4th 1400, 1412.)" Exhibit E, In re Criscione, pp 16.

The United States Supreme Court stated that the only evidence that has indicia of reliability can be used by the sentencing court to determine that persons lenth of sentence. Evidence found true by the Jury or admitted to be true by the Defendant at court. Blakely v. Washington, supra; Apprendi v. New Jersey, supra; In re Winship, supra; et al.. And since the P.C. Section 3041(a) specificailly state that the Board must follow the same rules and regulations that the Sentencing Court must follow, these Case Laws protecting Due Process Rights in the determination of length of sentences, MUST be followed by the Board. Especially since the Petitioner has exceeded the maxium minium of parole ineligibility set by law for his crimes. The Board Must point to actual facts supported by reliable evidence to support their findings of unsuitability, or set a parole date. P.C. section 3041; In re Lawrence, supra; et al..

There is no Factual reliable evidence for the Board to hold that Petitioner was a danger to public safety above the danger that any citizen on the streets present. There is not one piece of evidence that Petitioner's parole plans are unreasonable. He has job offers, housing, land and money, as well as the emmotional, physical and materials support of family and friends. Petitioner has a GED and a 12.6 GPL. He has a stable relationship with his Family. He has matured since the crime. He was under a great deal of stress at the time that caused an adolesent to strike out. That stress no long exists.

The Board's denial is clearly Boiler Plate verbage.

V.

THE STATE HAS VIOLATED THE PLEA BARGAIN AT ALL PAROLE HEARINGS BY CLAIMING 'FACTS' NOT ADJUDICATED IN COURT IN SUPPORT OF FINDING PETITIONER UNSUITABLE FOR PAROLE.

- FACT -

In the plea agreement, the District Attorney's Office specified each and every fact that they wanted Petitioner to admit to in exchange for Second Degree murder sentence of 19 to life (Petitioner picked up an additional one year sentence while incarcerated).

Petitioner, in open Court admitted to all facts stipulated by the Plea Bargain and the Court accepted the plea and the agreement.

At each and every hearing of parole suitability, the State - i.e., the D.A.'s Office, has introduced a written statement of their current views of the crime, which differs extreamly from the Plea Agreement facts. They have claimed repeatedly, that it was not acctually a second degree murder, but an execution style pre-meditated murderous rampage. And so on. (Court will have to issue a discovery order to obtain the written statements, since Board Appointed Counsel has refused to turn over the documents and the State Habeas Courts have refused to issue discovery orders and an evidentary hearing on the matter.)

- LAWS -

A Plea Bargain is a contract between the state and the charged individual that certain specified facts are true in exchange for a plea of guilt to the specified charge(s), etc.. The State must abide by the agreement it makes as long as the individual does. If either party violates the agreement, the plea is void. Santobello v. New York (1971) 404 US 257, 262; et al.. The State is held to the literal terms of the agreement. United States v. Johnson (CA 9th 1999) 187 F.3d 1129, 1134; et alli.. The plea excludes the possibility of reasonable inferences to the contrary, bind the parties to the agreed upon facts of the case. People v. Kilpatrick (CA 3d 1980) 105 Cal.App.3d 401, 413, 164 Cal.Rptr. 349. Under Cal.P.C. section 1192.2 a person cannot be punished for facts and acts not specified in the plea agreement. PC. section 3041(a) binds the Board to the facts adjudicated in court - not the later claims by the state.

> "It is impossible to imagine prosecuting authorities would have made such an offer if they believed that they could show (defendant) acted (as now claimed at the BPH hearing). More importantly, the Board's finding that (defendant) acted in (such a) manner flies in the face of the findings ...." In re Scott (2004) 119 Cal.App.4th 871, 15 Cal.Rptr.3d 32, 45.

In the parole context, the requirements of due process must be met by the reliance on evidence that has been adjudicated in court, on the crime itself. Briggs v. Terhune (CA 9th Cir. 2003) 334 F.3d 910, 914; Jones v. United States (1999) 526 US 227, 243; Apprendi v. New York (2000) 530 US 466, 484, 489, n.16, 489; et al....

The D.A. is an Officer of the Court and the Represenative of the State. As such, they are required to obey the Rules of Professional conduct. Filing false and/or misleading documents presumes an intent to secure a determination based upon them and is a clear violation of law. Davis v. State Bar (1983) 33 Cal.3d 213, 239-240, 188 Cal.Rptr. 441, 445, 655 P.2d 1276; Olguin v. State Bar ( )28 Cal.3d 195, 199-200, 167 Cal.Rptr. 876, 616 P.2d 858; Rule 7-105, State Bar Rules of Professional Conduct; et al.. Conduct unbecoming is conduct contrary to Professional Standards that show an unfitness to discharge obligations to the Court, the State and the Law. In re Snyder (1985) 472 US 634, 644-45; Theard v. United States (1957) 354 US 278, 281; et al..

Dispite repeated rulings by the courts on parole boards relying on the claims of the D.A.'s that donot correspond to the facts adjudicated in court regarding the commitment offense(s), the D.A.'s and the Board continue to rely on facts not adjudicated in accordance to due process to determine unsuitability.

How many defendants would accept a plea agreement in exchange for a life max sentence, if the D.A. stated in court that they were not bound to the agreed upon facts and would present un-adjudicated 'facts' at the parole hearings to keep defendant incarcerated for the max term of life????

The fact that the Board accepts and clearly supports such actions of the DA., raises the question of legallity of the whole parole hearing process. The fact that numerous courts have found that the facts relied upon by the Board presented by the State, were not the ones found by the jury or admitted to by the Defendant

should raise some red flags that something is wrong. Especially, since they continue to do so, even after the courts speciffically state that the facts are not supported by the evidence properly adjudicated at trial, or plea hearing. The Board has repeatedly, reused the facts in the rehearings ordered by the courts. Showing total disregard for the courts and the laws.

The Defendant has the constitutional right to have the State prove to a jury all the facts legally essential to the punishment. This includes plea agreement facts - in as much as that the defendant admitts to those facts stated in the agreement as true, just as if a jury found them. Any fact not expressily admitted to by the Defendant can not be used to determine his sentence. Blakely supra, 124 S.Ct. at 2543. To allow the State to use facts not subjected to the regors of jury and/or not agreed as true by the state and defendant in a plea agreement, clearly violates the Petitioner's Constitutional Rights, and Liberty Interest in Parole.

Since Parole is the rule, In re Scott, supra, et al., and not the exception to the rule. Allowing the State to introduce un-proven allegations in an attempt to support unsuitablity allows the rule to be ignored for the exception.

CONCLUSION

The State has intentionally deprived the Petitioner of his Liberty Interest in Parole through the introduction of un-proven allegations; Ignoring facts and findings without out any evidence to the contrary; Ignoring any fact that shows eiligibility for parole; Denying effective assistance of counsel; and so on.

Petitioner has suitable parole plans; he is not a threat to society according to the Pscy reports; he has matured and developed stable relationships with family and friends, an so on.... AND has completed the statutory maximum of parole ineligibility set by the state for his crime.

Thus the actions of the Board violates Petitioner's rights and the Laws of the State and Country, requiring reversal and court ordered release.

> "However, the diferential "some evidence" standard has outer limits. (Citation.) If it is established that a particular judgment was predetermined, then a prisoner's due process rights will have been violated even if there is "some evidence" to support the decision. (See Bakalis v. Golembeski, 35 F.3d 318, 326 (7th Cir.1994) (a decision-making "body that has prejudged the outcome cannot render a decision that comports with due process."); see also, In re Rosenkrantz, 29 Cal.4th at 677, ... (a parole decision "must reflect an individualized consideration of the specified criteria and cannot be arbitrary and capricious.") The California Supreme Court has explicitly stated that a blanket no-parole policy as to certain catagory of prisoners is illegal. (Citation.)" Martin v. Marshall, supra, 431 F.Supp.2d at 1043.

In what little of the evidence Petitioner does have, a strong showing is made for discovery of the materials denied by Board Appointed Counsel in clear violation of State Laws; The Sentencing and Plea Hearing Transcripts; et al., as shown in Exhibit H, the Board had already determined before the hearing not to grant parole suitability and had encouraged Appointed Counsel to secure a waiver of Suitability, which counsel did. Instead of preparing for the hearing as required by Professional Conduct Rules and the Constitution, and statutes. Counsel chose not to since she knew that the Board had already made it's decision in advance of the hearing.

It is also shown, that the Board did not have any evidence to contradict nor challenge Parole Plans, Psych. Report, et al., that suppoorts suitability. The use of the crime, unless they can and do point to specific evidence that was adjudicated in accordance with Due Process Requirments, can not be used past the Statutory maxium eneligibility period of 19 years (15 for the Second degree murder, and 4 for the weapon use enhancement). As even the CDCR and the Board documents show, in Exhibits G and H, the Petitioner became eligible for parole, including the one year sentence, on or about May 30, 1992. Petitioner calculates that from his arrest on June 17, 1979 started the clock since he did not bailout of jail prior to incarceration in the State Prison. Twenty years ended on June 17, 1999. This encludes the determinate sentences of 4 years and 1 year, with the 15 years of the life sentence. Either number shows that the base ineligibility period set by law expiried. The Board ignored laws and case laws prohibiting the use

the facts of the crime after the base ineligibility period had passed, unless the proven evidence of the case shows it to be of a greater or especially grave, heinous, atrocious incomparison to other Second degree murders. But, instead of relying on the evidence adjudicated in court, the Board relied on the claims of the State and the report of an over worked probation officer, that under California Laws can contain unadjudicated 'facts', suppositions, conjecture, hearsay, etc., that have not withstood the rigors of Due Process.

The Board told Petitioner to get a vocational training, while knowing that due to his epilepsy, the prison system willnot permit him to obtain. This is a 'Catch-22' situation and a clear violation of their regulations. (15 CCR sect. 2402(d)(8)) That uses the word 'OR' in it, stating: "..has made realistic plans for release or has developed marketable skills...". It does not use the word 'and'. Petitioner has Realistic Plans for Release. He has the support of family and friends as well as job offers and housing. On top of which his Grandfather and Mother has left him with a farm and money upon his release and return to Mexico. And the Board had before it, the evidence of such. Yet it declared that the Petitioner did not have realistic plans for parole, with no evidence to support such a decision. Thus shows that their decision was arbitrary and capricious, and not based on the evidence.

The Board violated their own regulations, Court Orders and Rulings, State Laws that govern their actions, and Petitioner's Legal Rights in denying parole suitability. The 'some evidence' standard was not even met since that standard requires that the evidence itself must meet the Due Process standards first, before the Board can rely upon it, and they have not used any evidence that meets this standard.

Petitioner was deprived of Liberty Interest in Parole by the Board and the Board had already determined the out-come prior to the hearing in direct violation of Constitutional Rights of Petitioner. Thus, their decision doesnot meet the standards of law, and cannot stand. The Board has shown numerous times to the courts, that even if returned to them for a new hearing, they are going to do business as usual and deny parole. Petitioner therefore asks that upon showing of good cause that the

Court order his release and return to his native Country of Mexico forthwith, Instead of allowing the Board to delay the release by doing business as normal through a rehearing and having to re-litigate through the state courts.

Petitioner has changed and his prison record does reflect this change. Petitioner is no longer the adolesent that went on a temper-tantrum that ended up taking a life of an innocent by-stander. Petitioner can not change the past, no one can, but this Court can assist him in changing his present and give him a better future as a productive citizen. And is that not the main goal of punishment? To correct patterns that lead to illegal acts.

PRAYER

Petitioner prays that the Court grant an evidentary hearing and grant appointment of cousel to conduct discovery to obtain the evidence that will support all of Petitioner's issues, since the state courts have refused to hold such a hearing and denied the discovery requests.

Petitioner also requests that the Court, upon finds of the evidence protect Petitioner's future rights to Due Process since the Board has admitted to the Marin Superior Court, and has proven by its actions, that it willnot obey the laws and court orders without being forced to do so. That the Court removes the Parole determination from the Board in this case.

///

///

EXHIBIT

'A'

Name JOSE RAMIREZ-SALGADO

Address D2-233-L P.O. Box 5002

Calipatria State Prison

Calipatria CA 92233-5002

CDC or ID Number C-11124

SUPERIOR COURT OF CALIFORNIA

FOR SAN DIEGO COUNTY

(Court)

JOSE RAMIREZ-SALGADO

Petitioner

vs.

L.E. SCRIBNER, Warden (A)

Respondent

PETITION FOR WRIT OF HABEAS CORPUS

Request for Discovery and Hearing

No. _____

(To be supplied by the Clerk of the Court)

INSTRUCTIONS — READ CAREFULLY

- **If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.**
- **If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.**
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies.
- If you are filing this petition in the California Supreme Court, file the original and thirteen copies.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under Rules 56.5 and 201(h)(1) of the California Rules of Court [as amended effective January 1, 1999]. Subsequent amendments to Rule 44(b) may change the number of copies to be furnished the Supreme Court and Court of Appeal.

MC-275

Name JOSE RAMIREZ-SALGADO

Address D2-233-L P.O. BOX 5002

CALIPATRIA STATE PRISON

CALIPATRIA CA 92233-5002

CDC or ID Number C-11124

CALIFORNIA COURT OF APPEAL

FOURTH DISTRICT

(Court)

JOSE RAMIREZ-SALGADO

Petitioner

vs.

L.E. SCRIBNER, WARDEN (A)

Respondent

PETITION FOR WRIT OF HABEAS CORPUS

No. D048877

(To be supplied by the Clerk of the Court)

EVIDENTIARY HEARING REQUESTED

INSTRUCTIONS — READ CAREFULLY

- **If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.**
- **If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.**

- Read the entire form *before* answering any questions.
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Name Jose RAMIREZ-SALCIDO

Address D2-233-L P.O. Box 5002

Calipatria State Prison

Calipatria CA 92233-5002

CDC or ID Number E-37814

SUPREME COURT OF CALIFORNIA

(Court)

Jose RAMIREZ-SALCIDO
Petitioner

vs.

L.E. SCRIBNER, Warden(A)
Respondent

PETITION FOR WRIT OF HABEAS CORPUS

No. _____
(To be supplied by the Clerk of the Court)

EVIDENTIARY HEARING - DENIED - SAN DIEGO COUNTY

INSTRUCTIONS — READ CAREFULLY

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- **If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.**

- Read the entire form *before* answering any questions.
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Approved by the Judicial Council of California for use under Rules 56.5 and 201(h)(1) of the California Rules of Court [as amended effective January 1, 1999]. Subsequent amendments to Rule 44(b) may change the number of copies to be furnished the Supreme Court and Court of Appeal.

'B'

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

IN THE MATTER OF THE APPLICATION OF:	HC 17291 - 2nd Petition
JOSE RAMIREZ-SALGADO,	CR 47435
Petitioner.	ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

AFTER REVIEWING THE PETITION FOR WRIT OF HABEAS CORPUS AND THE COURT FILE IN THE ABOVE-REFERENCED MATTER, THE COURT FINDS AS FOLLOWS:

On November 1, 1979, Petitioner pleaded guilty to second-degree murder (Pen. Code § 187), robbery (Pen. Code § 211), and assault with a deadly weapon (Pen. Code § 245(a)). Petitioner also admitted the allegation that he was personally armed with a firearm during the commission of the above offenses. (Pen. Code § 12022.5). On November 28, 1979, Petitioner was sentenced to an indeterminate term of 20 years to life in state prison.

On February 7, 2003, Petitioner filed his first petition for writ of habeas corpus in this Court, contending he received ineffective assistance of his defense counsel. This petition was denied on February 19, 2003.

Petitioner filed the instant second petition for writ of habeas corpus in this Court on February 22, 2006, challenging the November 1, 2005 decision of the California Board of Parole Hearings

("BPH" or "Board") finding him unsuitable for parole. Petitioner argues the Board violated his constitutionally protected liberty interest in parole by not setting a parole release date. Petitioner also argues he received ineffective assistance of his counsel at the parole hearing, and the BPH used facts to deny parole that were not admitted by Petitioner in his plea agreement.

The Petition is denied for the following reasons.

Every petitioner must set forth a *prima facie* statement of facts which would entitle him to habeas corpus relief under existing law. (*In re Bower* (1985) 38 Cal.3d 865, 872.) Vague or conclusory allegations do not warrant habeas relief. (*People v. Duvall* (1995) 9 Cal.4th 464, 474.) The petitioner bears the burden of proving the facts upon which he bases his claim for relief. (*In re Riddle* (1962) 57 Cal.2d 848, 852.) The petition should include copies of reasonably available documentary evidence in support of claims, including pertinent portions of hearing transcripts and affidavits or declarations. (*People v. Duvall, supra,* 9 Cal.4th at 474.) A petitioner's unsubstantiated, self-serving statements do not provide a sufficient basis upon which to prove his claims. (*In re Alvernaz* (1992) 2 Cal.4th 924, 945.)

Petitioner has not met this burden.

Overview Of Parole Suitability Standards:

By statute, when determining suitability for parole, the parole board "shall normally set a parole release date" (Pen. Code § 3041(a)) "unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of a current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual" (Pen. Code § 3041(b)). The state Legislature has given the BPH the power to establish the rules and regulations regarding release on parole. (Pen. Code § 3052.) The BPH regulations require a panel determining parole suitability for a life prisoner to find the prisoner unsuitable for parole if, in the judgment of the panel, the prisoner will pose an unreasonable risk of danger to society if released from prison. (California Code of Regulations, Title 15 [hereafter 15 C.C.R.] §§ 2281(a), 2402(a).) The BPH should consider all relevant, reliable information available to it, including the prisoner's social history, past and present mental state, criminal history, commitment offenses, behavior before, during and after the crime, attitudes toward the crime, and

any other information that bears on the prisoner's suitability for release. (15 C.C.R. §§ 2281(b), 2402(b).)

The BPH has also set forth general factors that tend to show suitability and unsuitability for parole. (15 C.C.R. §§ 2281(c)-(d), 2402(c)-(d).) The following are the factors tending to show *unsuitability* for parole that the parole board should consider:

> (1) Commitment Offense. The prisoner committed the offense in an especially heinous, atrocious or cruel manner. The factors to be considered include:
> (A) Multiple victims were attacked, injured or killed in the same or separate incidents.
> (B) The offense was carried out in a dispassionate and calculated manner, such as an execution-style murder.
> (C) The victim was abused, defiled or mutilated during or after the offense.
> (D) The offense was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering.
> (E) The motive for the crime is inexplicable or very trivial in relation to the offense.
> (2) Previous Record of Violence. The prisoner on previous occasions inflicted or attempted to inflict serious injury on a victim, particularly if the prisoner demonstrated serious assaultive behavior at an early age.
> (3) Unstable Social History. The prisoner has a history of unstable or tumultuous relationships with others.
> (4) Sadistic Sexual Offenses. The prisoner has previously sexually assaulted another in a manner calculated to inflict unusual pain or fear upon the victim.
> (5) Psychological Factors. The prisoner has a lengthy history of severe mental problems related to the offense.
> (6) Institutional Behavior. The prisoner has engaged in serious misconduct in prison or jail.

(15 C.C.R. § 2402(c).) The following are the factors tending to show *suitability* for parole that the parole board should consider:

> (1) No Juvenile Record. The prisoner does not have a record of assaulting others as a juvenile or committing crimes with a potential of personal harm to victims.
> (2) Stable Social History. The prisoner has experienced reasonably stable relationships with others.
> (3) Signs of Remorse. The prisoner performed acts which tend to indicate the presence of remorse, such as attempting to repair the damage, seeking help for or relieving suffering of the victim, or indicating that he understands the nature and magnitude of the offense.
> (4) Motivation for Crime. The prisoner committed his crime as the result of significant stress in his life, especially if the stress has built over a long period of time.
> (5) Battered Woman Syndrome. At the time of the commission of the crime, the prisoner suffered from Battered Woman Syndrome, as defined in section 2000(b), and it appears the criminal behavior was the result of that victimization.
> (6) Lack of Criminal History. The prisoner lacks any significant history of violent crime.
> (7) Age. The prisoner's present age reduces the probability of recidivism.
> (8) Understanding and Plans for Future. The prisoner has made realistic plans for release or has developed marketable skills that can be put to use upon release.

(9) Institutional Behavior. Institutional activities indicate an enhanced ability to function within the law upon release.
(15 C.C.R. § 2402(d)).

The precise manner in which these specified factors are considered and balanced lies within the broad discretion of the BPH, but any decision to deny parole cannot be arbitrary or capricious. (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 656-657, 677 (*Rosenkrantz*).) Thus, the standard is that a life prisoner such as Petitioner should be granted parole unless the BPH finds, in the exercise of its broad discretion, the prisoner is unsuitable for parole in light of the circumstances specified by statute and by regulation. (See *Rosenkrantz, supra,* 29 Cal.4th at 654-655.) The overriding factor in determining whether a prisoner is suitable for parole is public safety. (Pen. Code § 3041; 15 C.C.R. § 2402(a); *In re Dannenberg* (2005) 34 Cal.4th 1061, 1084 (*Dannenberg*); *In re Scott* (2005) 133 Cal.App.4th 573, 591 (*Scott*).)

Judicial review of the BPH's decision whether a prisoner is suitable for parole is limited to a determination of whether the factual basis for the decision is supported by some evidence in the record presented to the parole board that has some indicia of reliability. (*Rosenkrantz, supra,* 29 Cal.4th at 667; *Scott, supra,* 133 Cal.App.4th at 590-591.) This standard of review requires only a "modicum of evidence." (*Rosenkrantz, supra,* 29 Cal.4th at 677.) It is within the BPH's discretion to decide how to resolve conflicts in the evidence and to decide how much weight to give each factor. (*Id.* at 656, 677.) "It is irrelevant that a court might determine that evidence in the record tending to establish suitability for parole far outweighs evidence demonstrating unsuitability for parole." (*Id.* at 677.) As long as the BPH's decision reflects individualized consideration of the specified criteria and legal standards, and is not arbitrary or capricious, the court's review is limited to ascertaining whether there is some evidence in the record that supports the decision. (*Id.*)

Petitioner's Claims On Habeas Corpus:

"Some Evidence" to Support Denial of Parole:

Petitioner argues he was deprived of his constitutionally protected liberty interest in parole because there is no evidence to support the Board's decision denying him parole. However, this claim is without merit.

The federal courts indeed have found the language of Penal Code § 3041 creates a liberty interest in release on parole, which is protected by the procedural safeguards of the due process clause. (*Biggs v. Terhune* (9th Cir. 2003) 334 F.3d 610, 614; *McQuillion v. Duncan* (9th Cir. 2002) 306 F.3d. 895, 902-903; see also, *Rosenkrantz, supra,* 29 Cal.4th at 653.) However, the California Supreme Court has recently found that whether a prisoner is suitable for parole trumps the prisoner's expectancy of a set parole date. (*Dannenberg, supra,* 34 Cal.4th at 1070-1071 ["The statutory scheme, viewed as a whole, thus clearly elevates a life prisoner's individual suitability for parole above the inmate's expectancy in early setting of a fixed and "uniform" parole date."]) Thus, there is no violation of a prisoner's liberty interest if the parole board properly denied parole.

A decision to deny parole can be based on the nature of the prisoner's underlying offense alone, as long as the parole board has given due consideration to all applicable factors regarding suitability for parole (*Rosenkrantz, supra,* 29 Cal.4th at 677, 682-683; see also, *Scott, supra,* 133 Cal.App.4th at 594-595), and the circumstances of the commitment offense reasonably could be considered more aggravated or more violent than the minimum necessary to sustain a conviction for that offense (*Rosenkrantz, supra,* at 678, 683; see also, *Dannenberg, supra,* 34 Cal.4th at 1098.)

The parole board in this case did not rely solely on Petitioner's commitment offense in denying him parole. The BPH gave due consideration to all the applicable factors regarding suitability for parole as set forth in 15 C.C.R. §2402(c), (d). First, the BPH considered the underlying commitment offense. Petitioner robbed two victims at gunpoint. He took cigarettes and six dollars from the victims and told them to start running down an alley. They did, and Petitioner fired shots at them, striking one of them in the neck. Petitioner continued running down the alley, firing several more shots at the victims. Petitioner then ran up to a vehicle that had entered the alley, and fired three shots at the occupants. The shots missed the occupants of the vehicle, and Petitioner continued to run down the alley. At that point, a resident who had heard the shots came out of his residence to investigate. Petitioner shot the man three times in the chest and back, fatally wounding him. Petitioner continued running down the alley and approached another victim and demanded his wallet at gunpoint. Petitioner found no wallet, and told the victim to run. As the victim was running, he heard a gunshot. The victim looked back and saw Petitioner run toward him and fire

another shot. (Petition, Exh. A at 11:9-12:10). The Board found that the offense was committed in an especially cruel and callous manner (15 C.C.R. §2402(c)(1); Petition, Exh. A at 27:8-11). Multiple victims were attacked. (15 C.C.R. §2402(c)(1)(A); Exh. A at 28:8-11). The offense was carried out in a dispassionate and calculated manner. (15 C.C.R. §2402(c)(1)(B); Exh. A at 27:11-15). The motive for the crime was very trivial in relation to the offense in that Petitioner shot two people, killing one of them. (15 C.C.R. §2402(c)(1)(E); Exh. A at 27:15-18).

The Board also considered Petitioner's previous criminal record and social history. (15 C.C.R. §2402(c)(2), (3)). Petitioner has a history of unstable relationships with others, and a record of an escalating pattern of criminal conduct and violence. (Petition, Exh. A at 27:18-23).

The Board also considered Petitioner's institutional behavior. (15 C.C.R. §2402(c)(6)). The Board noted Petitioner has programmed in a limited manner while incarcerated. (Petition, Exh. A at 27:24-25). Petitioner has failed to develop a marketable skill that he can put to use when released, has not upgraded vocationally, and has not sufficiently participated in self-help or therapy programs. (Exh. A at 27:26-28:3). In addition, Petitioner has received five 128's and twenty-five 115's while incarcerated. (Exh. A at 28:3-6). He received two of those 115's since his last parole hearing. (Exh. A at 14:17-19).

The Board next considered Petitioner's parole plans. (15 C.C.R. §2402(d)(8)). The BPH noted Petitioner's parole plans were not realistic in that he does not have acceptable employment plans or a marketable skill. (Petition, Exh. A at 28:7-10).

The Board also considered psychological factors. (15 C.C.R. §2402(c)(5)). The BPH reviewed Petitioner's psychological report from 2002, which states Petitioner has a high classification score of 230, but that his behavior has been improving. (Petition, Exh. A at 15:16-23).

The Board also reviewed the 3042 Notice responses, which indicate an opposition to a finding of parole suitability, specifically from the San Diego District Attorney's Office and the victim's wife. (Petition, Exh. A at 16:15-19). The Board also reviewed letters submitted in support of Petitioner's release from several of Petitioner's family members. (Exh. A at 16:19-22).

After weighing the above factors, the BPH determined the positive aspects did not outweigh the unsuitability for parole, and denied parole for five years. The Board concluded:

> The prisoner needs therapy in order to face, discuss, understand and cope with stress in a nondestructive manner until progress is made the prisoner continues to be unpredictable and a threat to others. Therapy in a controlled setting but motivation is questionable. In view of the prisoner's assaultive history, continued negative behavior and lack of program participation there is no indication that the prisoner would behave differently if paroled.
> (Petition, Exh. A at 28:11-19).

Based on the above, there is "some evidence" in the record to support the Board's finding that Petitioner is unsuitable for parole. This Court finds no abuse of the Board's discretion is apparent in this case.

Ineffective Assistance of Counsel:

Petitioner next argues he received ineffective assistance of his counsel at the suitability hearing in that his counsel attempted to prevent him from appearing at the parole hearing. However, Petitioner has presented no evidence he was prejudiced by his counsel's alleged deficiencies.

To show that counsel was ineffective, Petitioner must show (1) counsel's representation was deficient in that it "fell below an objective standard of reasonableness . . . under prevailing professional norms," and (2) counsel's deficient performance prejudiced his defense. (*Strickland v. Washington* (1984) 466 U.S. 668, 688; *People v. Ledesma* (1987) 43 Cal.3d 171.)

The first prong is reviewed under a standard of deferential scrutiny. (*Strickland, supra*, at 689; *Ledesma, supra*, at 216.) Counsel is given the benefit of a strong presumption that his or her conduct fell within the "wide range of reasonable professional assistance." (*Id.*) "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." (*In re Marquez* (1992) 1 Cal.4th584, 603, citing *Strickland, supra*, at 689.)

"To establish ineffective assistance of counsel under either the federal or state guarantee, a defendant must show that counsel's representation fell below an objective standard of reasonableness under prevailing professional norms, and that counsel's deficient performance was prejudicial, i.e., that a reasonable probability exists that, but for counsel's failings, the result would have been more favorable to the defendant. (*Ledesma, supra*, at 239, citing *Strickland, supra,* at 687-688; *People v. Waidla* (2000) 22 Cal. 4th 690, 718)."

The *Strickland* court advised, "a court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies . . . . If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed." (*Strickland, supra*, at 697).

Here, Petitioner has not shown he suffered prejudice as a result of his counsel's alleged attempt to persuade Petitioner to waive his presence at his parole hearing. Petitioner did personally appear at the hearing, and thus, his counsel's alleged actions were not prejudicial. Accordingly, this Court need not reach the issue of whether his counsels' assistance fell outside the range of reasonable professional assistance.

Decision Based on Facts Not Admitted in Plea:

Petitioner also argues the BPH used facts to deny parole that were not admitted by Petitioner in his plea agreement, determined by the court at the plea hearing, or relied upon by the prosecution in offering the plea bargain. This claim is also denied.

A prisoner may refuse to discuss the facts of the crime, in which instance a decision shall be made based on the other information available. The Board takes as true the appellate court's factual findings, or, if there are none, the statement of facts in the probation officer's report. (15 C.C.R. §2236; CEB, Criminal Law Procedure and Practice (2005), § 47.40, p. 1456). Petitioner has cited no law to support his contention that the Board acted improperly in considering facts of the commitment offense that were taken from the 2002 Board report.

Moreover, Petitioner has submitted no evidence in support of his contention. Petitioner fails to state which facts on which the Board improperly relied, and why those facts were erroneous. Petitioner's unsubstantiated, self-serving statements do not provide a sufficient basis upon which to prove his claims. (*In re Alvernaz* (1992) 2 Cal.4th 924, 945.)

Request for Assignment of Counsel:

Petitioner's request for assignment of counsel is also denied. Counsel must be provided to an indigent petitioner who makes "adequately detailed factual allegations stating a prima facie case for relief." (*People v. Barton* (1978) 21 Cal.3d 513, 519, fn. 3; *People v. Shipman* (1965) 62 Cal.2d

226, 232). As discussed above, Petitioner here has failed to state a *prima facie* case for relief on habeas corpus. Petitioner has also provided no evidence he is indigent.

Therefore, the petition for writ of habeas corpus is DENIED, in its entirety.

A copy of this order shall be served upon 1) Petitioner; and 2) the Office of the San Diego County District Attorney (Appellate Division).

IT IS SO ORDERED.

DATED: 4-11-06

LISA FOSTER
JUDGE OF THE SUPERIOR COURT

I hereby certify that the foregoing instrument is a full, true & correct copy of the original on file in this office, that said document has not been revoked, annulled or set aside, and it is in full force and effect.
Attest: APR 11 2006 @ 4PM
Clerk of the Superior Court of the State of California, in and for the County of San Diego
By _____ Deputy

COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re JOSE RAMIREZ-SALGADO	D048877
on	(San Diego County Super. Ct. No. CR47435)
Habeas Corpus.	

THE COURT:

The petition for writ of habeas corpus has been read and considered by Justices Nares, McDonald and Irion.

Jose Ramirez-Salgado is serving a prison sentence of 20 years to life after pleading guilty in 1979 to second degree murder, robbery and assault with a deadly weapon, and admitting he was personally armed with a firearm when he committed the offenses. On November 1, 2005, the Board of Parole Hearings (Board) held a hearing and declined to set a parole date, finding Ramirez-Salgado would pose an unreasonable risk to society or public safety if released. The Board based its decision on the cruel and callous nature of the offense, finding multiple victims were attacked or killed and the motive for the crime was inexplicable or trivial compared to the offense. The Board further found Ramirez-Salgado has a record of violence, an escalating pattern of criminal conduct and a history of unstable relationships with others. He has limited prison programming, failed to develop a marketable skill to use when released, failed to upgrade his vocational skills and has not sufficiently participated in beneficial self-help or therapy programs. Further, Ramirez-Salgado failed to show positive changes in that he received 30 disciplinary reports while incarcerated, including two since his last parole hearing.

Ramirez-Salgado claims: (1) the Board relied on facts of the crime which were not admitted by him in his plea agreement, not found by the court at the change of plea hearing and not relied on by the prosecution in offering the plea bargain; (2) he received ineffective assistance of counsel before, during and after the suitability hearing because counsel advised him to waive his right to be present at that hearing; (3) the Board's findings he was unsuitable for parole were contrary to the facts, unreasonable and violated his due process rights; and (4) the Board violated his due process rights by

exercising his legal right to personally appear at the parole suitability hearing and predetermined the outcome of that hearing. (*In re Alvernaz* (1992) 2 Cal.4th 924, 945.)

The petition is denied.

NARES, Acting P. J.

Copies to: All parties

S148454

IN THE SUPREME COURT OF CALIFORNIA

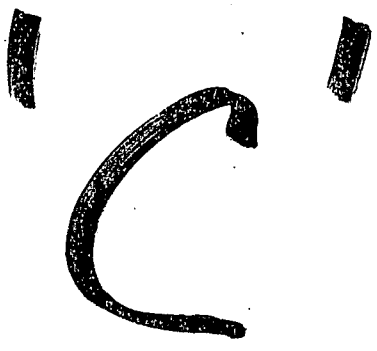
En Banc

In re JOSE RAMIREZ-SALGADO on Habeas Corpus

The petition for writ of habeas corpus is denied.

GEORGE

Chief Justice



SUBSEQUENT PAROLE CONSIDERATION HEARING

STATE OF CALIFORNIA

BOARD OF PAROLE HEARINGS

In the matter of the Life Term Parole Consideration Hearing of:

JOSE RAMIREZSALGADO

CDC Number C-11124

INMATE COPY

CALIPATRIA STATE PRISON

CALIPATRIA, CALIFORNIA

NOVEMBER 1, 2005

PANEL PRESENT:

Mr. Stephen Lee, Presiding Commissioner
Mr. George Saldamando, Commissioner
Mr. Alejandro Armenta, Deputy Commissioner

OTHERS PRESENT:
Mr. Jose Ramirezsalgado, Inmate
Ms. Linda Ludwig, Attorney for Inmate
Mr. A. Rodriguez, District Attorney
Correctional Officers Unidentified

CORRECTIONS TO THE DECISION HAVE BEEN MADE

_____ No
_____ Yes

See Review of Hearing Transcript Memorandum

Jennyfer Osecheck, Peters Shorthand Reporting

INDEX

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P R O C E E D I N G S

PRESIDING COMMISSIONER LEE: This is a Subsequent Parole Consideration Hearing for Jose Ramirezsalgado, CDC Number C-11124. We are currently located at Calipatria State Prison date of hearing is November 1, 2005. The inmate was received on December 5, 1979 excuse me, that doesn't sound right. Out of the county of San Diego, in CR47435 the offense was murder in the second degree pursuant to Penal Code Section 187. The term was set at 15 years to life plus four years for the gun enhancement with a minimum eligibility for parole in May 30, 1982. At this time we will make our appearances my name is Stephen Lee, L-E-E, Commissioner presiding. We will go to the other Commissioner.

COMMISSIONER SALDAMANDO: George Saldamando, S-A-L-D-A-M-A-N-D-O, Commissioner.

DEPUTY COMMISSIONER ARMENTA: And I am Alejandro Armenta, A-R-M-E-N-T-A, Deputy Commissioner.

INMATE RAMIREZSALGADO: Jose Ramirezsalgado, R-A-M-I-R-E-Z-S-A-L-G-A-D-O.

PRESIDING COMMISSIONER LEE: Your CDC number sir?

INMATE RAMIREZSALGADO: C-11124.

ATTORNEY LUDWIG: Linda Ludwig, L-U-D-W-I-G, attorney for Mr. Ramirezsalgado.

PRESIDING COMMISSIONER LEE: Go ahead counsel.

DEPUTY DISTRICT ATTORNEY RODRIGUEZ: A. Rodriguez from the District Attorneys officer, R-O-D-R-I-G-U-E-Z.

PRESIDING COMMISSIONER LEE: Thank you at this time counsels I have an exhibit one. Take a look at it please to see if you have the documents listed in exhibit one. It has a date on the bottom right hand corner September 16, 2005.

ATTORNEY LUDWIG: I have the documents but I am going to note for the record that there was an addendum to the board report, which Mr. Ramirez had that I did not receive. Since it was one page or less it is not going to effect whether or not we have a hearing.

PRESIDING COMMISSIONER LEE: Very good thank you.

PRESIDING COMMISSIONER LEE: Counsel do you have the documents listed in exhibit one?

DEPUTY DISTRICT ATTORNEY RODRIGUEZ: Yes I do thank you.

PRESIDING COMMISSIONER LEE: Very good. At this time I also have another document that is

going to be marked exhibit two it is a document which explains the ADA rights of the inmate as well as his hearing rights. There are two signatures in the back counsel did you sign this document?

ATTORNEY LUDWIG: Yes.

PRESIDING COMMISSIONER LEE: Did you go over this document with your client?

ATTORNEY LUDWIG: Yes.

PRESIDING COMMISSIONER LEE: Alright Mr. Ramirezsalgado did you go over this document?

INMATE RAMIREZSALGADO: Yes.

PRESIDING COMMISSIONER LEE: All right, at this point and time do you wish for me to go over your ADA rights your outline of procedures or your inmate rights?

INMATE RAMIREZSALGADO: Yes.

PRESIDING COMMISSIONER LEE: Yes or no.

INMATE RAMIREZSALGADO: Yes.

PRESIDING COMMISSIONER LEE: You want me to go through it over again?

INMATE RAMIREZSALGADO: Oh no you don't have to read that again, she already read it to me.

PRESIDING COMMISSIONER LEE: That is what ok, are you having any problems with your hearing?

INMATE RAMIREZSALGADO: No, I just have some problems sometimes comprehending.

PRESIDING COMMISSIONER LEE: Is that comprehension because of the language or of something else?

INMATE RAMIREZSALGADO: Sometimes when I hear things I think in Spanish before I can think in English.

PRESIDING COMMISSIONER LEE: Ok, you don't want an interpreter though?

INMATE RAMIREZSALGADO: No.

ATTORNEY LUDWIG: We did have a discussion, Mr. Ramirez and I over the use of his eyeglasses. And he does need eyeglasses to read but he has told me that he does not need the glasses for the hearing. Is that correct Mr. Ramirez?

INMATE RAMIREZSALGADO: Yes.

PRESIDING COMMISSIONER LEE: So you wish to continue without your glasses at this time?

INMATE RAMIREZSALGADO: Yes.

PRESIDING COMMISSIONER LEE: All right at this point and time we will incorporate exhibit two into the file with exhibit one as well. At this time counsel is your client going to be discussing the facts of the case?

ATTORNEY LUDWIG: My client has elected not

to discuss and facts and circumstances of the case but will address the issue of remorse.

PRESIDING COMMISSIONER LEE: All right, sir would you raise your right hand. Do you solemnly swear to tell the truth the whole truth and nothing but the truth?

INMATE RAMIREZSALGADO: I do.

PRESIDING COMMISSIONER LEE: Alright, I will indicate to you, you have the right to be heard by an impartial panel, it is my understanding that excuse me Commissioner did you want to indicate something on the record?

COMMISSIONER SALDAMANDO: Yes Mr. Ramirez this is a San Diego case, I spent 34 years on the San Diego police department, 14 as the assistant chief is that going to influence you having me on the board?

INMATE RAMIREZSALGADO: No as long as you are fair?

COMMISSIONER SALDAMANDO: Ok.

PRESIDING COMMISSIONER LEE: At this point and time the inmate has been informed about the previous activities of the commissioner, he has waived it at this time so we are going to continue on. Inmate was born on April 24, 1960. Inmate was the second child born to a 17-year-old farmers wife. He knows nothing of his

mother's condition during pregnancy. Indicates that at the age of nine or ten he attended school in Mexico for about a year and a half. He learned the alphabet and was able to recognize a few words. After entering prison he taught himself to read in write in Spanish as well as later on in English. Inmate's parents were farmers in rural Mexico. He had one older sister and four younger ones. Two sisters have died, or died of pneumonia I should say, he has a brother one year his junior. His mother had some schooling as was able to read and write. Inmates mother died four months ago in a car accident while coming to visit him. This is troublesome. One of his sisters accompanied her but has recovered from her injuries, the inmate did not know his maternal grandparents they were killed in a uprising in 1968. Father and his parents had no education the paternal grandfather worked as a farmer and a butcher. His father died in 1967 of a lung disorder, his mother lived with a man in 1974 and later married him in 1980. Diabetes is reported on the mother's side of the family. Sir do you have any problems with diabetes?

INMATE RAMIREZSALGADO: Not yet.

PRESIDING COMMISSIONER LEE: Not yet so you

are thinking about it huh.

INMATE RAMIREZSALGADO: There is a lot of people in my family that have diabetes so.

PRESIDING COMMISSIONER LEE: You have to watch what you eat bottom line. Sir I am sorry to hear about your mother, what happened?

INMATE RAMIREZSALGADO: She had a roll over in the car when she was coming to visit me here.

PRESIDING COMMISSIONER LEE: Here?

INMATE RAMIREZSALGADO: Yes.

PRESIDING COMMISSIONER LEE: Where was she coming from?

INMATE RAMIREZSALGADO: San Diego.

PRESIDING COMMISSIONER LEE: And that was four months ago?

INMATE RAMIREZSALGADO: That was in 2001.

PRESIDING COMMISSIONER LEE: 2001 fortunately you have an old psychiatric report so how did you handle that.

INMATE RAMIREZSALGADO: It was kind of hard being in and not being able to attend to her, to see my mother in the funeral.

PRESIDING COMMISSIONER LEE: Have you been able to keep in touch with your sister?

INMATE RAMIREZSALGADO: Yes.

PRESIDING COMMISSIONER LEE: Ok, how about your other family members?

INMATE RAMIREZSALGADO: They come and visit me whenever they have time.

PRESIDING COMMISSIONER LEE: Inmate has had three live in relationships the duration was approximately two years. When he was 17 he fathered a son, his father however came and took their daughter, her father excuse me her parents however came and took their daughter and the last contact with them was the at the time of the court hearing. So you haven't been in contact with your child or your child's mother?

INMATE RAMIREZSALGADO: Not since 1979.

PRESIDING COMMISSIONER LEE: Substance abuse at the age of 12, the inmate began using marijuana, alcohol and heroine. All three?

INMATE RAMIREZSALGADO: Yes.

PRESIDING COMMISSIONER LEE: At the age of 12?

INMATE RAMIREZSALGADO: Yes.

PRESIDING COMMISSIONER LEE: Where did you get it?

INMATE RAMIREZSALGADO: From everybody on the streets in Tijuana.

PRESIDING COMMISSIONER LEE: You were just hanging out.

INMATE RAMIREZSALGADO: When I first got to Tijuana I was living on the streets.

PRESIDING COMMISSIONER LEE: Away from your family.

INMATE RAMIREZSALGADO: In 1972 I got a, I gathered all the money I could together and to come to San Diego because I wanted to come and find my mother. Because my mother come to San Diego in 1971.

PRESIDING COMMISSIONER LEE: Who were you staying with when you were in Mexico?

INMATE RAMIREZSALGADO: With my grandfather.

PRESIDING COMMISSIONER LEE: And you decided to go find your mother in San Diego?

INMATE RAMIREZSALGADO: Yes.

PRESIDING COMMISSIONER LEE: So when you were 12 years old you took everything you had and moved to Tijuana?

INMATE RAMIREZSALGADO: Moved to Tijuana yes.

PRESIDING COMMISSIONER LEE: Ok, but then you didn't go to San Diego?

INMATE RAMIREZSALGADO: No I stayed in Tijuana for a while until I find a way to come over and find my mother.

PRESIDING COMMISSIONER LEE: Ok so what were you doing in Tijuana at that time besides getting high?

INMATE RAMIREZSALGADO: Asking questions trying to find a way to get over here.

PRESIDING COMMISSIONER LEE: How did you pay for your drugs?

INMATE RAMIREZSALGADO: I was with some people that had drugs then I sell it and I would get a profit.

PRESIDING COMMISSIONER LEE: At age 16 the inmate was using alcohol and heroin regularly. So for four years you were drinking and taking heroin?

INMATE RAMIREZSALGADO: Yes.

PRESIDING COMMISSIONER LEE: All right, his pattern continued until the time of his arrest. It said that he had been clean from illegal substances since 1979. At this time we will go into the facts of the case. The inmate does not have any prior record juvenile or adult other than the case before us at this time. Your mother did have an live in relationship however did you ever know this person this stepfather or whoever he was?

INMATE RAMIREZSALGADO: Yes, I know him.

PRESIDING COMMISSIONER LEE: How did you know him?

INMATE RAMIREZSALGADO: Huh?

PRESIDING COMMISSIONER LEE: How did you

come to know him?

INMATE RAMIREZSALGADO: When I come over when I got home he was there.

PRESIDING COMMISSIONER LEE: You were 16?

INMATE RAMIREZSALGADO: Yes.

PRESIDING COMMISSIONER LEE: The facts of the case are being taken from the 2002 board report. Or I take that back the 2005 board report. On June 16, 1979 the inmate at gunpoint robbed the victim Sidney Pierce and Matthew Foster while they were walking on Wilson Avenue. The inmate appeared to be high or on something at the time. He took cigarettes and six dollars from the victims and told them to start running. They did and the inmate fired a couple of shots and one of them striking Pierce in the neck. So (indiscernible) ran down an alley firing several more shots. Salgado ran up to and started banging on a vehicle which had entered the alley. The vehicle was occupied by Mr. Holley and his son. He then fired three shots missing them and fled down the alleyway. Subsequently victim Lang came out of his residence to investigate. The gunshots and was shot three times in the chest and back fatally wounding him. He was dead on arrival at the hospital. There after the inmate continued his running in

the alley and approached another victim by the name of McCloud and demanded his wallet at gunpoint. McCloud told him he had no wallet and had only five one-dollar bills with him. Upon searching McCloud Salgado found no wallet and ordered McCloud to run. McCloud heard a shot turned and headed back toward the inmate. The inmate saw McCloud coming toward him and then he proceeded to run down the street and fire another shot. The following morning on June 17 the inmate was taken into custody a 22-semi caliber pistol was recovered. At this point and time the inmate has indicated to not discuss the facts of the case so at this point and time I will merely ask the inmate sir how do you feel about this offense?

INMATE RAMIREZSALGADO: I feel it was a tragedy that one life was taken, it was a mistake that I make, and I take full responsibility for that persons (indiscernible). I wished it never happened but it did.

PRESIDING COMMISSIONER LEE: Ok anything further?

INMATE RAMIREZSALGADO: Go ahead. I feel for this time in order I did commit a crime (indiscernible) because there was several crimes I committed that day. And keeping me in prison

any longer don't benefit nobody. They just harming more people. And I feel that I already paid my debt to society and I should be aloud to have another chance and go back into society.

PRESIDING COMMISSIONER LEE: Ok at this point and time I will turn it over to Deputy Commissioner, Deputy Commissioner will discuss with you your programming as well as your psychological.

DEPUTY COMMISSIONER ARMENTA: Ok, sir what we are going to do at this point is go over what you have been doing since your last hearing. You were denied for three years at that time, the last hearing was on April 16, 2002. It was held here in Calipatria. What I have done is I have gone over your Central File and over the reports prepared by correctional counselor Kellerman. And lets see what else. Let me have that one. I also went over the psychological report which I believe is from the year 2002 prepared by Doctor Dallenger. At the present time your current scores are 226. 226 points that is extremely high.

INMATE RAMIREZSALGADO: Yes.

DEPUTY COMMISSIONER ARMENTA: Ok, you have received a number of 115's you have 27 however they dismissed one in 2002. So you have 26

115's. Your last 115's there was three of them last year. Since your last hearing you have received three. Possession of dangerous contraband, battery of an inmate, and the other that the inmate was refusing to submit to a urine sample.

INMATE RAMIREZSALGADO: That battery on a inmate was dismissed.

DEPUTY COMMISSIONER ARMENTA: Ok, I didn't see that there.

INMATE RAMIREZSALGADO: I have a copy of it right here.

DEPUTY COMMISSIONER ARMENTA: Can I see it?

INMATE RAMIREZSALGADO: Yes.

DEPUTY COMMISSIONER ARMENTA: What happens is it is on the list this information is not in here because it is out. Yah. Ok so we will say you have received 25. And only two since your last hearing. While in prison apparently you did receive your GED. Back in 1991 you participated in the literacy lab you have worked in the kitchen, had been participating in AA and NA. You participated for a number of years in life skills, I saw a number of certificates in parenting and anger management and life without a crutch. You have been taking part in that. One thing sir I will tell you right now that

concerns me and you mentioned that you have done a long time in prison. But one of the purposes of these hearings is to determine whether you are would be safe for the community. And one of the factors we look at is your behavior. And when I see all these 115's it doesn't speak well for you. And 25 is a lot of 115's. And I see we have a number of them for fighting and pruno. Ok so we got that out of the way lets get into the psychological. Doctor Derringers diagnosis he states that under AXIS I which is the drug area that it is in remission, AXIS II he says you have antisocial personality disorder improving, AXIS III says you have epilepsy and AXIS IV average prisoner stress and gives you a functional score between 70 and 80. As to whether he considers you a risk, he says his acting out in earlier years (indiscernible) he still has a classification score of 230, this is back in 2002, and he sites your 115's he says however your behavior has been improving. And prior to that he had not been involved into the fight in quite a few years is what he is saying. His risk factors for violence seem to have been situationally produced in prison. Certainly if you were released to the community begin to fraternize with former gang members and resume

drugs and alcohol his violence potential would increase. Basically he is saying that if you were to have, you could keep your gains that you are earning in AA and NA and you went out to the community and you did not participate with gangs or get yourself into drugs and alcohol that you would be, your risk for dangerousness in the community would be average. Ok, is there anything else I haven't covered?

INMATE RAMIREZSALGADO: No you covered everything.

DEPUTY COMMISSIONER ARMENTA: Ok, thank you.

COMMISSIONER SALDAMANDO: Ok future plans. Pursuant to 3042 letters were sent out in reference to this hearing and we received two letters of opposition one from the San Diego Police Department and one from the victims wife Felicia Lang. We also received a letter of support from your niece Margarita. I guess a niece Malina, your sister Felipa, your niece Artaselle, and your sister Christina. Ok, --

INMATE RAMIREZSALGADO: I have other letters.

ATTORNEY LUDWIG: I do have one additional letter from his sister Felipe that was faxed over to me on the 26th of this month.

COMMISSIONER SALDAMANDO: State?

ATTORNEY LUDWIG: His plans to live with her.

COMMISSIONER SALDAMANDO: Can I see it? Thank you. Ok, Mr. Ramirezsalgado what are your plans? Your parole plans what plans have you made?

INMATE RAMIREZSALGADO: My first plans if I was to get out and start a business in Tijuana right. Cause I have ten acres of land that my grandfather left to me when he passed away. Then my family was trying to talk him into selling the ranch and start a business in Tijuana. The board had a lot of concerns about me being paroled in Tijuana the last time. So I talked to my family and recommend my family if I get out that my grandfather wishes and go do some farm workers. Far away from the borderline because if I stay on the borderline more likely you know I am going to sooner or later going to be identified as a Mexican mafia dropout and probably marking myself for death. So I will be better off and be better for me and my family if I go back to the ranch and do some farming.

COMMISSIONER SALDAMANDO: And where would you live?

INMATE RAMIREZSALGADO: In Jalisco.

COMMISSIONER SALDAMANDO: In the state of Jalisco in Mexico?

INMATE RAMIREZSALGADO: Yes.

COMMISSIONER SALDAMANDO: With whom?

INMATE RAMIREZSALGADO: Probably living out there in the beginning I will be staying there with my brothers law father and then I will be in my own house. There is a house on there but the house is not that good so I will have to rebuild the house. I have 50,000 dollars to restart my ranch, and get it back in order and working.

COMMISSIONER SALDAMANDO: And what city in Jalisco was it?

INMATE RAMIREZSALGADO: It is in (indiscernible).

COMMISSIONER SALDAMANDO: Ok, thank you. Commissioner.

PRESIDING COMMISSIONER LEE: At this point and time we have discussed with the inmate his previous history, his parole plans as well as his programming while incarcerated. Sir you said that you hope someday to be a Mexican mafia dropout is that what you said?

INMATE RAMIREZSALGADO: No I am a dropout?

PRESIDING COMMISSIONER LEE: When did you debrief?

INMATE RAMIREZSALGADO: I did it, I was a victim in 1997 and I was, I started the debriefing when I was in San Quentin in 1982.

PRESIDING COMMISSIONER LEE: We have no record of you debriefing.

INMATE RAMIREZSALGADO: Lieutenant Robinson goes by the name of (indiscernible).

PRESIDING COMMISSIONER LEE: So you are not in general population now?

INMATE RAMIREZSALGADO: No sir.

PRESIDING COMMISSIONER LEE: Ok, Deputy Commissioner do we have anything in the file?

DEPUTY COMMISSIONER ARMENTA: I am looking for it.

PRESIDING COMMISSIONER LEE: It appears that he did debrief not as a validated member but as an affiliate in 1993. This is based in the psychological report in 1996. That is the reason why it didn't come up. At this point and time counsel for the people do you have any questions of the inmate? Can you hear me?

DEPUTY DISTRICT ATTORNEY RODRIGUEZ: Yes I can, thank you. Because I couldn't see what the prisoner presented to the board with respect to the latest 115 about the battery my file indicates it was under review as least as of April of this year, is that been resolved?

INMATE RAMIREZSALGADO: The 115 was resolved in December of last year.

PRESIDING COMMISSIONER LEE: Ok, how has it been resolved?

INMATE RAMIREZSALGADO: The 115 hearing and that the officer that attended the hearing they finded me not guilty.

PRESIDING COMMISSIONER LEE: You have another one pending right?

INMATE RAMIREZSALGADO: No sir.

PRESIDING COMMISSIONER LEE: So you have nothing--

INMATE RAMIREZSALGADO: There is nothing pending at the moment.

DEPUTY DISTRICT ATTORNEY RODRIGUEZ: I am looking at the April 2005 board report under custody history and it indicates the RDR was judicated in December in 2004 and dismissed for insufficient evidence but is being reviewed by the CDO. I am wondering the status of the review?

PRESIDING COMMISSIONER LEE: Does the inmate know?

INMATE RAMIREZSALGADO: No.

PRESIDING COMMISSIONER LEE: At this point and time that is the status of that 115. Next question?

DEPUTY DISTRICT ATTORNEY RODRIGUEZ: Would the board please ask the prisoner if the prisoner believes he has a alcohol problem?

PRESIDING COMMISSIONER LEE: Sir.

INMATE RAMIREZSALGADO: No sir I don't not.

DEPUTY DISTRICT ATTORNEY RODRIGUEZ: Is it reportably that the prisoner believes he has a problem with drugs?

INMATE RAMIREZSALGADO: Not anymore.

DEPUTY DISTRICT ATTORNEY RODRIGUEZ: Would the board please ask the prisoner if he has a problem with violence?

INMATE RAMIREZSALGADO: No I don't have a problem with violence. Every time I get involved in violence is most of the time I have been put in a situation where I cannot avoid them. Most of the times I try to avoid them. And in the beginning I was a real aggressive person I did a lot of stabbings, but now my last stabbing was in 1983, since 1983 I try to avoid violence as much as possible. If nobody attacks me I don't attack nobody.

DEPUTY DISTRICT ATTORNEY RODRIGUEZ: The prisoner has chosen not to discuss the events I have no further questions. Thank you.

PRESIDING COMMISSIONER LEE: Counsel do you have any questions?

ATTORNEY LUDWIG: I have no questions.

PRESIDING COMMISSIONER LEE: At this time we will go to statements. Hold on just a second. Do you have any questions? All right at this point and time we will go to statements, counsel you may be heard.

DEPUTY DISTRICT ATTORNEY RODRIGUEZ: Thank you. I (indiscernible) the board am very aware of the underlying offense and the severity of the underlying offense the complete random act of violence that occurred that day and the absolutely pointless reason given for doing so. It is very troubling to the people that despite what the prisoner described is an extensive period of time in prison it seems that very little has changed. Because the excuse for the violence on the day of the offense was being high and drinking and yet the prisoner who has been in trouble several times for alcohol and contraband in prison seems, continues to deny having a problem with either alcohol or drugs. It was a sure violent act yet the prisoner had a lot of problems since being in prison denies having a problem with violence. Why that problem arises from the fact that there has been virtually no self-help and no treatment, he has just been doing time. And given that he is

going to get out someday if he gets his wish, he may end up in a situation where he is surrounded by an environment that produced him in the first place there really is no reason to believe he is not going to be violent once he gets out of a controlled environment of prison. In fact even in the controlled environment of prison he has trouble controlling himself. He gets out and he is going to start a business from scratch, he has to deal with other people. And maybe some of his old cohorts come looking for him, it is almost guarantee that there is going to be violence. There really has been no change in the prisoner all these years. It just has been watching time. It is unfortunate because he has been given and opportunity to resolve some of these issues and maybe someday get out and become a productive member of society. And who knows maybe someday he would return to the United States lawfully but he has chosen not to do that, he has chosen to just sort of stand on his head and mark his time and eventually he is going to earn up enough years and the board is going to let him go. I don't think that is reasonable. He may have had an unresolved (indiscernible) in CDC but he has had two or three since his last hearing just a couple of

years ago. He seems incapable of staying out of trouble, trouble in this controlled setting. Trouble when he gets out is going to be trouble for everybody. I don't think anything has changed since his last hearing and I don't think he is suitable for release. Thank you.

PRESIDING COMMISSIONER LEE: Thank you counsel. Counsel you may be heard.

ATTORNEY LUDWIG: Well Mr. Ramirez has made excellent parole plans for when he is released, I think he has a family that is supportive of him, financially and emotionally. He has plans to stay away from trouble in Mexico as well as California. The psychological report says if he refrains from drug and alcohol and gang lifestyles he would be an average risk in the community. And I am going to submit that he has his GED, he has done AA and NA. He doesn't have a vocational certificate because he has epilepsy apparently. But I think that he has shown that he can positive programming and he will be a success if he is released on parole. Thank you.

PRESIDING COMMISSIONER LEE: Sir?

INMATE RAMIREZSALGADO: My self I really don't know what to tell you I don't know because my attorney already told me it doesn't matter what I say right here because I will be denied a

few years.

ATTORNEY LUDWIG: I did not tell you it doesn't matter what you say I said you have the right to address the board on why you are suitable Mr. Ramirez, so please do that.

INMATE RAMIREZSALGADO: And try to get me to sign a paper for that I don't come in front of you members. No I feel that I have the right to come here and you know if you know if I get denied unless we should get a fair chance. Like I told you before it is a tragedy that I committed the crime. I wish it never happened but it did. And there is nothing I can do to change that, nobody can change it cause it is already done. (indiscernible) compassion and find it in your hearts to give me a chance to go back up there and start anew with my family. You know I know that when I commit this crime, they was I think a one or two year old child that, that man had or that family had he grow up without a father, I grow up without a father so I understand that he grow up with a lot of pain. A lot of sadness not being able to see his father, hug his father, or (indiscernible) football game or baseball game. I really wish you can find the kindness in your heart and give me a parole date.

PRESIDING COMMISSIONER LEE: Thank you at this time we will recess, we will clear the room, we will deliberate, and we will call everybody back once we have decided thank you.

R E C E S S

--oOo--

CALIFORNIA BOARD OF PAROLE HEARINGS

D E C I S I O N

COMMISSIONER SALDAMANDO: The panel has reviewed the information received from the public and relied on the following circumstances in concluding prisoner is not suitable for parole, and would pose an unreasonable risk to society and threat to public safety if released from prison. The offense was carried out in a cruel and callous manner there were multiple victims that were attacked and killed. The offense was carried out in a dispassionate and calculated manner the offense was carried out in a manner which demonstrates exceptionally callous disregard for human suffering. The motive for the crime was inexplicable. You shot and killed one person, you shot another person during this one series of attacks. The prisoner has previous occasions inflicted or tempted to inflict serious injuries on victims. The prisoner has a record of violence the prisoner has an escalating pattern of criminal conduct and violence. He also has a history of unstable relationships with others. The prisoner has programmed in a limited manner while incarcerated. He failed to develop a marketable skill that he can put to use when

released. He has failed to upgrade his vocational skills. He has not sufficiently participated in beneficial self-help or therapy programs. He has failed to develop evidence of positive change in that he has received five 128's and 27 115's the latest as of April 6, 2004. And he continues to display negative behavior while incarcerated. The prisoner lacks realistic parole plans in the he does not have acceptable employment plans and he does not have a marketable skill. The panel makes the following findings. The prisoner needs therapy in order to face, discuss, understand and cope with stress in a nondestructive manner until progress is made the prisoner continues to be unpredictable and a threat to others. Therapy in a controlled setting but motivation is questionable. In view of the prisoner's assultive history, continued negative behavior and lack of program participation there is no indication that the prisoner would behave differently if paroled. In a separate decision the hearing panel finds that the prisoner has been convicted of murder and it is not reasonable to expect that the parolee would be granted at a hearing during the next five years. Multiple victims were attacked and killed in separate incidents. The offense was carried out in a dispassionate calculated manner again the

offense was carried out in a manner which demonstrates exceptional callous disregard for human suffering. The motive for the crime was inexplicable. The prisoner has a record of violent behavior in that the prisoner again has 27 115's and five 128's. The prisoner has a history of unstable relationships with others a recent psychiatric report dated January 23, 2002 authored by John R. Bellinger PhD. Indicates a need for a longer period of observation and evaluation and treatment. The panel recommends that the prisoner become and remain disciplinary free, work toward reducing his custody level, so that program opportunities will become more available. If available upgrade his vocational skills if available participate in self-help and therapy programs. And cooperate with clinicians in a complete clinical evaluation. Commissioner do you have anything to say?

PRESIDING COMMISSIONER LEE: Well sir you have a very, very high classification score. Until you get your classification score you cannot expect getting a date. So you are going to have to work at it.

COMMISSIONER SALDAMANDO: Deputy Commissioner?

DEPUTY COMMISSIONER ARMENTA: From 1980 to 1983 you got 19 115's. You dug your hole very deep and it is going to take a while to get out of it. And every year that you don't get a 115 you at least earn eight points and that's what you get.

COMMISSIONER SALDAMANDO: Ok, the time is 12:40 and this completes our hearing.

--oOo--

PAROLE DENIED FIVE YEARS MAR 0 1 2006

THIS DECISION WILL BE FINAL ON:_____

YOU WILL BE PROMPLTY NOTIFIED IF, PRIOR TO THAT DATE, THE DECISION IS MODIFIED

CERTIFICATE AND

DECLARATION OF TRANSCRIBER

I, JENNYFER OSECHECK, a duly designated transcriber, PETERS SHORTHAND REPORTING, do hereby declare and certify under penalty of perjury that I have transcribed tape(s) which total one in number and cover a total of pages numbered 1 -30, and which recording was duly recorded at CALIPATRIA STATE PRISON, CALIPATRIA, CALIFORNIA, in the matter of the SUBSEQUENT PAROLE CONSIDERATION HEARING OF JOSE RAMIREZSALGADO, CDC NO. C-11124, ON NOVEMBER 1, 2005, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned tape to the best of my ability.

I hereby certify that I am a disinterested party in the above-mentioned matter and have no interest in the outcome of the hearing.

Dated December 4, 2005, at Sacramento, California.

Jennyfer Osecheck

JENNYFER OSECHECK
TRANSCRIBER
PETERS SHORTHAND REPORTING

'D'

Luis Ramirez Salgado
5442 Lenox Dr.
San Diego CA 92114

Re: Jose Ramirez-Salgado

I am asking this panel to please find leniency in their hearts for my brother Jose Ramirez-Salgado C-11124. He has been incarcerated now for over twenty-five years going on close to thirty years. Our family has suffered a lot of pain since his incarceration. Jose even missed our mother's funeral. Jose loved our mother beyond any measure! As well as she loved him!! I asked God day and night for his freedom everyday. " I now ask you". Since the death of my father, my brother and I lived alone for a while. We did everything together to get food and work to be able to survive. The day that he was incarcerated I knew that he didn't acted like himself that night. Now that he is older I know that he has change and he isn't the same, he has matured and knows what he did was wrong. Without my brother I am just not myself he is the only brother I have and wish to have him back by my side like we where when we where kids. He has a support plan from people that love him. I will take full responsibility of my brother. I already built a house for my brother in Tijuana Mexico. Also my sister Felipa Martinez has a bank account in Union Bank under her name where she deposits money that is only for my brother. Which is intended to be use when he gets out, so you can see that he has all the family support! His future could be bright if given the chance, if continue having him incarcerated any longer by no means benefits no one any longer. He is just getting older and has been expressing his remorse on numerous occasions. Our hearts cry out everyday for our party involved. There has to be a time for punishment and forgiveness when has completed his time. I fell in my heart that he has fulfilled that part of this tragedy. Now is

the time for healing and togetherness, "I beg you" please give my plea considerable consideration. And may God bless your hearts with the right decision.

Sincerely,

Luis Ramirez Salgado

Luis Ramirez Salgado

Jose Luis Ramirez
5442 Lenox Dr.
San Diego CA 92114

January 15, 2005

Calipatria State Prison Board of Prison Terms

Re: Jose Ramirez Salgado C-11124. Board Hearing

To whom it may concern in the B.P.T. hearing,

My name is Jose Luis Ramirez , I am the nefu of Jose Ramirez Salgado. I am writing this letter just to let you know that my uncle has change throughout these years. He is not the same nineteen year old that committed the ugly crime back in 1979. To today date my uncle is a different person. Some people do change and I truly believe that my uncle has change. He doesn't do and will not do the things he use to do when he was nineteen or twenty-three years of age. He wants his freedom and be sent back to Mexico, so that he can start a new life in his own country. I am supplicating to you to please see deep in to your heart and find that compassion that God has giving you, to give my uncle a parole date so I can have my uncle back with all of the family t. My father who is my uncle 's brother purchase two lots in Tijuana were he already built a house for my uncle to live in. My uncle has always had the family support and when he get his parole date he will have family support and financial support. Since 1993 all of the family has been preparing to help my uncle to start a new life when out of prison. All of our family loves him very much and misses his companionship.

Sincerely,

Jose Luis Ramirez

Ramon Ramirez
5442 Lenox Dr.
San Diego CA 92114

January 22, 2005

Calipatria State Prison Board of Prison Terms

Re: Jose Ramirez Salgado C-11124 Board Hearing

To whom it may concern in the B.P.T hearing,

My name is Ramon Ramirez and I am the nephew of Jose Ramirez Salgado, and that is why I am writing this letter just to let you know that my uncle has change he is not the same nineteen year old that committed the ugly crime back in 1979. Till today's date my uncle has been a different person.

You know some people do change and I really believe that my uncle has change. He does not do things that he did when he was nineteen or twenty-three. He wants to be free and sent back to Mexico so that he can start a new life in his own country. I am asking and supplicating to you to please see deep into your hearts and find that compassion that God has giving you to please give my uncle a parole date so I can have my uncle back with all of the family. Also my father has purchase two lots in Tijuana were he built a house for my uncle to live in when he comes out. He also has all the family support and financially support.

Since 1993 all of the family has been preparing to help my uncle to start a new life with his family that loves him and misses him. Thank you for your time and may god bless you .

Sincerely,

Ramon Ramirez

Maricela Ramirez
5442 Lenox Dr.
San Diego CA 92114

January 20, 2005

Re: Jose Ramirez Salgado, C-1114

To whom it may concern in the B.P.T. hearing,

When I turn five my father started taking me to visit my uncle Jose Ramirez-Salgado it was the first time that I meet him. He is the only uncle I have and he looks like my dad and I would sometimes mistake him as my dad. From what I could remember my uncle always will tell me to be good and don't chose the wrong friends. He wouldn't only give me advice he would do the same with my older brother and my younger ones. When I got older I asked my uncle "why he had to stay and he couldn't leave with us" he got sad and he told me that he had to stay in there for the wrong mistakes he made when he was nineteen. Then I asked what he did, he just turn away and said that he did something bad that he wishes he had never had done and told me to not make the same mistakes he did. He would comfort me by telling me that he would one day be out when he finish serving his time and would be able to teach me how to make belts and wooded clocks. He also warn me about gangs and told me that having those types of friends won't get me no where but in trouble. Every advice he gave me and my brothers where very helpful because thanks to God that none of our family is involve in gangs or in drugs. Every time we went to visit him was exciting but when it came the time to say goodbye to him sadden me so much to see my grandma cry and my dad cry because I never would see my dad cry because he has always been a strong man that really doesn't like to show his feelings. I know for a fact that my dad has always need his older brother by his side. When my uncle was incarcerated my dad's family hasn't been the same because he says how is it going to be a family with out there brother. My grandma loved my uncle so much that she

had money saved for him to get him out, her wish was to see her boy out of prison and to start a new life all over again. My grandma always wanted to go visit him, if visitation where all week she would of been there. She started to save money to buy herself a car to be able to go visit him more often. My grandma was born on June 12, 1941 and died on June 22, 2001. The day of the accident was when my grandma and her older daughter where going to visit my uncle, when they where half way there my grandma lost control of the car and flip over. I was at work when my brother went to tell my the news that my grandma had pass away and that my aunt luckily had lived. My uncle suffered so much to find out that his mother had died and he couldn't say goodbye to her or even see her. I strongly believe that my uncle has change and that he isn't a little boy he is a grown man that needs to have a chance to start all over again. I know that if my grandmother was a live she would of been the first one to try to do anything for her son. Now it is all of his family doing anything possible just to see the whole family together the way my grandmother has always wanted it to be. My uncle disservice a chance and he should get it because he has completed his time. He wouldn't be alone he has all of the family support and he has somewhere to live at and he will be financially supported by all of use when he gets his parole date. I am sorry if my letter is long and I personally don't think is long enough to say what I want to say but I am going to make it short. All I want is that for you to see deep down into your hearts and give him a chance, so that he could finally be a family again. Thank you for your time.

Sincerely,

Maricela Ramirez

TALLER "JUNIORS"

MANTENIMIENTO Y MAS

LUCIA ANDRADE RAMIREZ R.F.C.AARL681213D31

CURP: AARL681213MBCNMC04

BRONCE Y HERMOSILLO #133 COL. REVOLUCION ENSENADA.B.C 22830

TEL: 172-10-78

Ensenada, B.C. del 2005

Regarding: Jose Ramirez Salgado

Throughout this letter I testified that I know Jose Ramirez Salgado, to whom I am requesting his presence and services in my business as a painter. Thanking you for you attention.

Lucia Andrade Ramirez

Lucia Anrade Ramirez

Further Questions Tel: 172-10-78/ 0446461579259

Thank you

January 31, 2005

Felipa Martinez
3139 Shelby Dr
National City, CA 91950
Re: Jose Ramirez Salgado C-11124

To Whom It May Concern:

Once again I testified that my brother Jose Ramirez Salgado has never been alone I have been by his side since day one taking full responsibility of him and his needs such as food, clothing, medical issues and economical. I have been with him trying to help him in everything I can since we have faith in GOD that he will be out of prison one day.

My brother Luis Ramirez has also helped Jose Ramirez Salgado by purchasing a property in Tijuana Baja California Mexico, where he has build a house for Jose. Even though my brother Jose Ramirez Salgado owns a property in Atotonilco Mexico, we are planning on selling that property so we can use that money to purchase a restaurant in Tijuana Baja California Mexico witch will be a business that the family will be operating including my husband Pedro Martinez, so the family can have Jose Ramirez Salgado close to us since my brother and I have properties here in San Diego we can't afford to travel a lot.

I have also kept a bank account separated for my brother in Union Bank of California, money that mother Teresa Ashley that past away left for her son Jose Ramirez Salgado under my name, but that money is only for my brother for when he gets out. As you all can see my brother Jose Ramirez Salgado has fully support from his family. I thank you dearly for you time.

Sincerely,

Felipa Martinez

Felipa Martinez

January 31, 2005

Marielena Martinez
3139 Shelby Dr
National City, CA 91950

To Whom It May Concern:

The purpose of this letter is to testify that I am the knee of Jose Ramirez Salgado C-11124. I meet him six years ago. I know that every single one of us makes mistakes during our life's, but I also believe that we learn from our errors and our mistakes makes us reflect on what we did wrong and makes us mature and it brings us to redemption were we try to be a better person each day of our life's to try to live better and better ourselves to try to bring us to perfection in what we did wrong in the past.

I do believe that my uncle Jose Ramirez Salgado C-11124 has learned from his mistakes for the time I have meet him he has shown maturity and redemption to his sins committed on the past. I know that God gives each one of us chances to better our self's and who are we to take that opportunity from someone who wants to be better person. Since I was seventeen years old I started visiting my uncle and giving him all my support, because from my point of view I believe that twenty four years in prison are plenty years to pay for a crime done in his youth years. I have a two year old daughter and many other family that would love to share family blessing with our siblings Jose Ramirez he has missed single event that has happened in our family from marriage to giving birth to a new family member. I have given him my support morally and economically I know that my mother Felipa Martinez and my Uncle Luis Ramirez have property for Jose Ramirez Salgado waiting for him in Mexico. He has all the support from our family all we want to see is that my uncle can form part of the family he has really never meet since he has been in prison half of his life.

I appreciate you time and I hope that you can see the need and love we have for my uncle Jose Ramirez to have him with us. I think everyone deserves a second change in life don't you think so? God Bless

Sincerely,

Marielena Martinez

C-1194

PRESIDENCIA MUNICIPAL
D E
ATOTONILCO EL ALTO, JAL.
47750 MEXICO

DEPENDENCIA	PRESIDENCIA MUNICIPAL
NUM. DE OFICIO	
EXPEDIENTE	

Asunto: El que se indica.

EL QUE SUSCRIBE SR. JORGE LUIS SERRANO SOLORIO, PRESIDENTE MUNICIPAL DEL H. AYUNTAMIENTO CONSTITUCIONAL DE ESTA CIUDAD----------
----------C E R T I F I C A----------

Que ante mi, comparecieron los C.C. JOSE IÑIGUEZ RAMIREZ Y CELIA OCEGUEDA DE IÑIGUEZ, para manifestar que:

EL C. JOSE RAMIREZ SALGADO, es sucesor UNICO, de su abuelo paterno - Sr. Ramón Ramirez Garcia, finado, del Ejido San José del Valle de esta Comprensión Municipal, con dotación de 10 Hectareas de tierra y- 1 casa.

Se extiende la presente CERTIFICACION, a petición del interesado para los fines legales que correspondan.

A t e n t a m e n t e .
SUFRAGIO EFECTIVO. NO REELECCION
Atotonilco el Alto, Jal. Febrero 21 de 1992
" POR UN ATOTONILCO MEJOR "

PRESIDENCIA MUNICIPAL ★ ESTADOS UNIDOS MEXICANOS ★ ATOTONILCO EL ALTO, JAL.

JORGE LUIS SERRANO SOLORIO
PRESIDENTE MUNICIPAL

INSTITUTO FEDERAL ELECTORAL
REGISTRO FEDERAL DE ELECTORES
CREDENCIAL PARA VOTAR

NOMBRE
INIGUES
ALBA
JOSE EUGENIO

EDAD 54
SEXO H

DOMICILIO
C LAZARO CARDENAS S/N -
LOC SAN JOSE DEL VALLE 47775
ATOTONILCO EL ALTO ,JAL.

FOLIO 0000020960973 AÑO DE REGISTRO 1991 01
CLAVE DE ELECTOR IGALEG49031914H000
ESTADO 14 DISTRITO
MUNICIPIO 013 LOCALIDAD 0086 SECCION 0187

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ESTE DOCUMENTO ES INTRANSFERIBLE, NO ES VALIDO SI PRESENTA TACHADURAS O ENMENDADURAS

EL TITULAR ESTA OBLIGADO A NOTIFICAR EL CAMBIO DE DOMICILIO EN LOS 30 DIAS SIGUIENTES A QUE ESTE OCURRA.

FERNANDO ZERTUCHE MUÑOZ
SECRETARIO EJECUTIVO DEL
INSTITUTO FEDERAL ELECTORAL

ELECCIONES FEDERALES 12 15 06 09
LOCALES 09 10 11 12 03 04 05 06 07 08

Lic. Oscar Jaime Sánchez Notario Público No. 4 Estados Unidos Mexicanos Atotonilco el Alto, Jal.

LIC. OSCAR JAIME SANCHEZ Notario Público
Titular encargado de la Notaría Pública No. 4 hago
constar que la presente copia fotostática es fiel repro
ducción del original que tuve a la vista en 1
- - - - UNA - - - - - - - - - -
fojas útiles doy fe.
Atotonilco el Alto, Jal. 2 de Mayo del 2,005

Lic. Oscar Jaime Sánchez Notario Público No. 4 Estados Unidos Mexicanos Atotonilco el Alto, Jal.

A QUIEN CORRESPONDA:

JOSE EUGENIO IÑIGUES ALBA, mexicano por nacimiento, mayor de edad, casado, Agricultor, y con domicilio en la calle Lázaro Cardenas Sin número, San Jose del -- Valle, Municipio de esta Ciudad y de transito, con respeto:

Bajo Formal Protesta de Decir Ver--- dad manifiesto conocer al señor JOSE RAMIREZ SALGADO, persona-- a quien identifico debidamente en Razón de conocerlo desde hace aproximadamente 33 años y que es originario de Portezuelo, Municipio de la Barca, Jalisco, que fuimos vecinos y me consta que- es una persona honesta y trabajadora y de buenas costumbres.

Misma que se encuentra en calidad de- detenido en la Ciudad de Calipatria, California Estados Unidos- de Norteamerica, y pro ser mi conocido en cuanto sea liberado - vó le reasignare nuevamente su puesto que anteriormente desempeñaba en este País.

En fé de lo anterior otorgo la presente para todos los efectos legales correspondientes en la Ciudad de Atotonilco el Alto, Jalisco a los 2 de Mayo del 2,005

JOSE EUGENIO IÑIGUES ALBA

J. Eugenio Iñigues.

--- En la Ciudad de Atotonilco el Alto, Jalisco a los días del- mes de Mayo del 2,005 dos mil cinco, Ante mí, LICENCIADO OSCAR- JAIME SANCHEZ, Notario Público Número 4 cuatro de está Municipalidad, comparecio el señor JOSE EUGENIO IÑIGUES ALBA, quien ratifica sus generlaes expuestas y quien por no ser de mi conocimiento se identifica con su Credencial para Votar con fotogra-

fia expedida por el Instituto Federal Electoral con número de folio 20960973 dos, cero, nueve, seis, cero, nueve siete, tres, a quien conceptuo con plena capacidad legal de ejercicio habiendome manifestado estar al corriente en el Pago del Impuesto Sobre la Renta, sin habermelo acreditado por lo que le hice las advertencias de Ley y me dice Que reconoce como suya la firma que calza el ocurso que antecede fechado al día de hoy relativo a una Constancia de Identidad, Ratificando en todas y cada una de sus partes el contenido de dicho documento, por lo que Yó, el Notario Certifico la autenticidad de las firmas por haber sido puesta en mi presencia y para constancia de lo anterior firma nuevamente Ante mí, a las 12.00 doce horas del día de su fecha. Doy Fe. - - - - - - - - - - - - - - - - - -

Lic. Oscar Jaime Sánchez Notario Público No. 4 ESTADOS UNIDOS MEXICANOS Atotonilco el Alto, Jal.

J Eugenio Trujeyà.

Lic. Oscar Jaime Sánchez Notario Público No. 4 ESTADOS UNIDOS MEXICANOS Atotonilco el Alto, Jal.

'E'

County of Santa Clara
Superior Court of California
191 North First Street
San Jose, California 95113
(408) 882-2700
HALL OF JUSTICE

Re: CRISCIONE, ARTHUR **D.O.B. : XXXXXXXXX**
Case#: 71614

☐ There was not enough information
☐ Not a full name, alias, or D.O.B. to match.
☐ The case number that was given was incomplete or incorrect

☐ Our records do not reflect any complaint(s) filed for the year(s) to within the County of Santa Clara.

☐ The files requested are located at another Court Facility, your request and check has been forwarded:

☐ The file was purged due to applicable time statutes.

☒ Other: ENCLOSED FIND 1(ONE) TIME COURTESY COPY OF ORDER DATED 08/30/07. SAME ORDER ISSUED FOR DEF. JAMEISON CASE NUMBER 71194.

☐ Payment was not included or is insufficient:

GC 70627(a)	Copies	$ 0.50 per page(single sided) (two sided=2 pages)
GC 70626(a)(4)	Certifications	$15.00 per certification per document
GC 70627(c)	Any search for records or files which takes longer than 10 minutes	$15.00

Fees due for this Request:

0 X copies @ $ 0.50 per page =	$0
0 X certification @ $15.00 each =	$0
0 Excess time Fee@ $15.00=	$0
TOTAL AMOUNT DUE =	$0
AMOUNT SUBMITTED:	$____
BALANCE DUE:	$COURTESY COPY ONE TIME ONLY

DATE: 10/17/2007

By:
Andrina R. Roman-Castillo, LPCIII
HOJ PUBLIC SERVICE DIVISION

(ENDORSED)
FILED
AUG 30 2007
KIRI TORRE
Chief Executive Officer/Clerk of the Santa Clara County
BY BRET MORROW DEPUTY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

In re

ARTHUR CRISCIONE,

On Habeas Corpus

No.: 71614

ORDER

INTRODUCTION

Petitioner alleges that he has been denied due process of law because the Board has used standards and criteria which are unconstitutionally vague in order to find him unsuitable for parole. Alternatively, he argues that those standards, even if constitutionally sound, are nonetheless being applied in an arbitrary and meaningless fashion by the Board. He relies upon evidence that in one hundred percent of 2690 randomly chosen cases, the Board found the commitment offense to be "especially heinous, atrocious or cruel", a factor tending to show unsuitability under Title 15 §2402(c)(1).

Are the Board Criteria Unconstitutionally Vague?

Our courts have long recognized that both state and federal due process requirements dictate that the Board must apply detailed standards when evaluating whether an individual inmate is unsuitable for parole on public safety grounds. (See *In re Dannenberg* (2005) 34

1357

Cal.4th 1061 at p. 1096, footnote 16.) Those standards are found in 15 CCR §2402(c) (*Dannenberg, supra*, 34 Cal.4th at p. 1080,) and do include detailed criteria to be applied by the Board when considering the commitment offense:

> (c) Circumstances Tending to Show Unsuitability. The following circumstances each tend to indicate unsuitability for release. These circumstances are set forth as general guidelines; the importance attached to any circumstance or combination of circumstances in a particular case is left to the judgment of the panel. Circumstances tending to indicate unsuitability include:
>
> (1) Commitment Offense. The prisoner committed the offense in an especially heinous, atrocious or cruel manner. The factors to be considered include:
>
> (A) Multiple victims were attacked, injured or killed in the same or separate incidents.
>
> (B) The offense was carried out in a dispassionate and calculated manner, such as an execution-style murder.
>
> (C) The victim was abused, defiled or mutilated during or after the offense.
>
> (D) The offense was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering.
>
> (E) The motive for the crime is inexplicable or very trivial in relation to the offense.

In response to Petitioners claim that the regulations are impermissibly vague, Respondent argues that while "especially heinous, atrocious or cruel" might be vague in the abstract it is limited by factors (A)-(E) of §2402(c)(1), and thus provides a 'principled basis' for distinguishing between those cases which are contemplated in that section and those which are not. An examination of cases involving vagueness challenges to death penalty statutes is instructive here and shows that Respondent's position has merit:

"Our precedents make clear that a State's capital sentencing

> scheme also must genuinely narrow the class of persons eligible for the death penalty. When the purpose of a statutory aggravating circumstance is to enable the sentencer to distinguish those who deserve capital punishment from those who do not, the circumstance must provide a principled basis for doing so. If the sentencer fairly could conclude that an aggravating circumstance applies to every defendant eligible for the death penalty, the circumstance is constitutionally infirm." (*Arave v. Creech* (1993) 507 U.S. 463, 474, citing *Maynard v. Cartwright* (1988) 486 U.S. 356, 364: "invalidating aggravating circumstance that 'an ordinary person could honestly believe' described every murder," and *Godfrey v. Georgia* (1980) 446 U.S. 420, 428-429: "A person of ordinary sensibility could fairly characterize almost every murder as 'outrageously or wantonly vile, horrible and inhuman.'")

It cannot fairly be said that 'every murder' could be categorized as "especially heinous, atrocious or cruel" under the Board regulations, since the defining factors contained in subdivisions (A)-(E) clearly narrow the group of cases to which it applies. Although Petitioner also argues that the "vague statutory language is not rendered more precise by defining it in terms or synonyms of equal or greater uncertainty" (*People v. Superior Court (Engert)* (1982) 31 Cal.3d 797, 803, *Pryor v. Municipal Court* (1979) 25 Cal.3d 238, 249. *See also Walton v. Arizona* (1990) 497 U.S. 639, 654), the factors in those subdivisions are not themselves vague or uncertain. The mere fact that there may be some subjective component (such as "exceptionally callous" disregard for human suffering) does not render that factor unconstitutionally vague. The proper degree of definition of such factors is not susceptible of mathematical precision, but will be constitutionally sufficient if it gives meaningful guidance to the Board.

> A law is void for vagueness if it "fails to provide adequate notice to those who must observe its strictures and impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and

discriminatory application." (*People v. Rubalcava* (2000) 23 Cal.4th 322, 332 quoting *People ex rel. Gallo v. Acuna* (1997) 14 Cal. 4th 1090, 1116, quoting *Grayned v. City of Rockford* (1972) 408 U.S. 104, 108-109.)

A review of cases expressing approval of definitions to limit the application of otherwise vague terms in death penalty statutes leads inextricably to the conclusion that the limiting factors in §2402(c) easily pass constitutional muster. An Arizona statute was upheld that provided a crime is committed in an 'especially cruel manner' when the perpetrator inflicts mental anguish or physical abuse before the victim's death," and that "mental anguish includes a victim's uncertainty as to his ultimate fate." (*Walton v. Arizona* (1990) 497 U.S. 639, 654.) Similarly, the court in *Maynard v. Cartwright*, 486 U.S. at 364-365, approved a definition that would limit Oklahoma's "especially heinous, atrocious, or cruel" aggravating circumstance to murders involving "some kind of torture or physical abuse. In Florida, the statute authorizing the death penalty if the crime is "especially heinous, atrocious, or cruel," satisfied due process concerns where it was further defined as "the conscienceless or pitiless crime which is unnecessarily torturous to the victim." *State v. Dixon* (1973) 283 So. 2d 1 at p. 9.

Here, the factors in subdivisions (A)-(E) provide equally clear limiting construction to the term "especially heinous, atrocious, or cruel" in §2402(c).

Has the Board Engaged in a Pattern of Arbitrary Application of the Criteria?

As previously noted, 15 CCR §2402 provides detailed criteria for determining whether a crime is "exceptionally heinous, atrocious or cruel" such that it tends to indicate unsuitability for parole. Our

courts have held that to fit within those criteria and thus serve as a basis for a finding of unsuitability, the circumstances of the crime must be more aggravated or violent than the minimum necessary to sustain a conviction for that offense. (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 682-683.) Where that is the case, the nature of the prisoner's offense, *alone*, can constitute a sufficient basis for denying parole. (*In re Dannenberg, supra*, 34 Cal.4th at p. 1095.)

Petitioner claims that those criteria, even if constitutionally sound, have been applied by the Board in an arbitrary and capricious manner rendering them devoid of any meaning whatever. The role of the reviewing court under these circumstances has been addressed previously in the specific context of Parole Board actions:

> "[Courts have] an obligation, however, to look beyond the facial validity of a statute that is subject to possible unconstitutional administration since a law though fair on its face and impartial in appearance may be open to serious abuses in administration and courts may be imposed upon if the substantial rights of the persons charged are not adequately safeguarded at every stage of the proceedings. We have recognized that this court's obligation to oversee the execution of the penal laws of California extends not only to judicial proceedings, but also to the administration of the Indeterminate Sentence Law." (*In re Rodriguez* (1975) 14 Cal.3d 639, 648, quoting *Minnesota v. Probate Court* (1940) 309 U.S. 270, 277.)

Similarly, in *In re Minnis* (1972) 7 Cal.3d 639, 645, the case closest on point to the present situation, the California Supreme Court stated: "This court has traditionally accepted its responsibility to prevent an authority vested with discretion from implementing a policy which would defeat the legislative motive for enacting a system of laws." Where, as here, the question is whether determinations are being made in a manner that is arbitrary and capricious, judicial oversight "must be extensive enough to protect

limited right of parole applicants to be free from an arbitrary parole decision . . . and to something more than mere pro-forma consideration.'" (*In re Ramirez* (2001) 94 Cal.App.4th 549 at p. 564, quoting *In re Sturm* (1974) 11 Cal.3d 258 at p. 268.)

This Court, therefore, now examines Petitioner's "as applied" void for vagueness challenge.

The Evidence Presented

A similar claim to those raised here, involving allegations of abuse of discretion by the Board in making parole decisions, was presented to the Court of Appeal in *In re Ramirez, supra*. The court there observed that such a "serious claim of abuse of discretion" must be "adequately supported with evidence" which should be "comprehensive." (*Ramirez, supra*, 94 Cal.App.4th at p. 564, fn. 5.) The claim was rejected in that case because there was not "a sufficient record to evaluate." (*Ibid.*) In these cases, however, there is comprehensive evidence offered in support of Petitioner's claims.

Discovery orders were issued in five different cases involving life term inmates (Petitioners) who all presented identical claims.[1]

[1] This Court takes judicial notice of the several other cases currently pending (Lewis #68038, Jameison #71194, Bragg #108543, Ngo #127611.) which raise this same issue and in which proof was presented on this same point. (Evidence Code § 452(d). See specifically, in the habeas corpus context, *In re Vargus* (2000) 83 Cal.App.4th 1125, 1134-1136, 1143, in which judicial notice was taken of the evidence in four other cases and in which the court noted: "Facts from other cases may assist petitioner in establishing a pattern." See generally *McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1491: "trial and appellate courts ... may properly take judicial notice of ... established facts from both the same case and other cases." And see *AB Group v. Wertin* (1997) 59 Cal.App.4th 1022, 1036: Judicial notice taken of other cases when matters are "just as relevant to the present [case] as they are to the others.")

The purpose of the discovery was to bring before the Court a comprehensive compilation and examination of Board decisions in a statistically significant number of cases. The Board decisions under examination consisted of final decisions of the Board for life-term inmates convicted of first or second degree murder and presently eligible for parole. Included were all such decisions issued in certain months, chosen by virtue of their proximity in time to the parole denials challenged in the pending petitions. All Board decisions in the months of August, September and October of 2002, July, August, September, October, November, and December of 2003, January and February of 2004, February of 2005, and January of 2006 were compiled. This resulted in a review of 2690 cases decided in a total of 13 months.

The purpose of the review was to determine how many inmates had actually been denied parole based in whole or in part on the Board's finding that their commitment offense fits the criteria set forth in Title 15 §2402(c)(1) as "especially heinous, atrocious or cruel." A member of the research team conducting the review, Karen Rega, testified that in its decisions the Board does not actually cite CCR rule §2402(c), but consistently uses the specific words or phrases ("verbiage from code") contained therein, so that it could easily be determined when that criteria was being applied. (For example, finding "multiple victims" invokes §2402(c)(1)(A); finding the crime "dispassionate" "calculated" or "execution style" invokes §2402(c)(1)(B); that a victim was "abused" "mutilated" or "defiled" invokes §2402(c)(1)(C); a crime that is "exceptionally callous" or demonstrated a "disregard for human suffering" fits criteria

§2402(c)(1)(D)" and finding the motive for the crime "inexplicable" or "trivial" invokes §2402(c)(1)(E)."

Petitioners provided charts, summaries, declarations, and the raw data establishing the above in the cases of Lewis #68038, Jameison #70194, Bragg #108543, and Ngo #127611. In this case (Criscione #71614) the evidence was presented somewhat differently. Both to spread the burden of the exhaustive examination, and to provide a check on Petitioners' methods, this Court ordered Respondent to undertake an examination of two randomly chosen months in the same manner as Petitioner had been doing. Respondent complied and provided periodic updates in which they continued to report that at all "the relevant hearings the Board relied on the commitment offense as a basis for denying parole." (See "Respondent's Final Discovery Update" filed April 5, 2007.) At the evidentiary hearing on this matter counsel for Respondents stipulated that "in all of those cases examined [by Respondent pursuant to the Criscione discovery orders] the Board relied on the commitment offense as a basis for denying parole." (See pages 34-35 of the June 1, 2007, evidentiary hearing transcript.)

The result of the initial examination was that in over 90 percent of cases the Board had found the commitment offense to be "especially heinous, atrocious or cruel" as set forth in Title 15 §2402(c)(1). In the remaining 10% of cases either parole had been granted, or it was unclear whether §2402(c)(1) was a reason for the parole denial. For all such cases, the decisions in the prior hearing for the inmate were obtained and examined. In every case, the Board had determined at some point in time that every inmates

crime was "especially heinous, atrocious or cruel" under Title 15 §2402(c)(1).

Thus, it was shown that 100% of commitment offenses reviewed by the Board during the 13 months under examination were found to be "especially heinous, atrocious or cruel" under Title 15 §2402(c)(1).

A further statistic of significance in this case is that there are only 9,750 inmates total who are eligible for, and who are currently receiving, parole consideration hearings as life term inmates. (See "Respondent's Evidentiary Hearing Brief," at p. 4, filed April 16, 2007.)

USE OF STATISTICS

In *International Brotherhood of Teamsters v. United States* (1977) 431 U.S. 324, 338-340, the United States Supreme Court reaffirmed that statistical evidence, of sufficient "proportions," can be sound and compelling proof. As noted by the court in *Everett v. Superior Court* (2002) 104 Cal.App.4th 388, 393, and the cases cited therein, "courts regularly have employed statistics to support an inference of intentional discrimination."

More recently, the United States Supreme Court, in *Miller-El v. Cockrell* (2003) 537 U.S. 322, 154 L.Ed.2d 931, when examining a habeas petitioner's allegations that the prosecutor was illegally using his peremptory challenges to exclude African-Americans from the petitioner's jury, noted that "the statistical evidence alone" was compelling. The high court analyzed the numbers and concluded: "Happenstance is unlikely to produce this disparity." (See also *People v. Hofsheier* (2004) 117 Cal.App.4th 438 in which "statistical

evidence" was noted as possibly being dispositive. And see *People v. Flores* (2006) 144 Cal.App.4th 625 in which a statistical survey and analysis, combined into an "actuarial instrument" was substantial proof.)

A statistical compilation and examination such as has been presented in these cases is entirely appropriate and sufficient evidence from which to draw sound conclusions about the Board's overall methods and practices.

THE EXPERT'S TESTIMONY

Petitioners provided expert testimony from Professor Mohammad Kafai regarding the statistics and the conclusions that necessarily follow from them. Professor Kafai is the director of the statistics program at San Francisco State University, he personally teaches statistics and probabilities, and it was undisputed that he was qualified to give the expert testimony that he did. No evidence was presented that conflicts or contradicts the testimony and conclusions of Professor Kafai. By stipulation of the parties, Professor Kafai's testimony was to be admissible and considered in the cases of all five petitioners. (See page 35 of the June 1, 2007, evidentiary hearing transcript.)

Professor Kafai testified that the samples in each case, which consisted of two or three months of Board decisions, are statistically sufficient to draw conclusions about the entire population of life term inmates currently facing parole eligibility hearings. Given that every inmate within the statistically significant samples had his or her crime labeled "'particularly

egregious'" or "especially heinous, atrocious or cruel" under Title 15 §2402(c)(1), it can be mathematically concluded that the same finding has been made for every inmate in the entire population of 9,750. Although he testified that statisticians never like to state unequivocally that something is proven to a 100% certainty, (because unforeseen anomalies are always theoretically possible,) he did indicate the evidence he had thus far examined came as close to that conclusion as could be allowed. Not surprisingly, Professor Kafai also testified that "more than 50% can't by definition constitute an exception."

Having found the data provided to the expert to be sound this Court also finds the expert's conclusions to be sound. In each of the five cases before the Court over 400 inmates were randomly chosen for examination. That number was statistically significant and was enough for the expert to draw conclusions about the entire population of 9,750 parole eligible inmates. The fact that the approximately 2000 inmates examined in the other cases also had their parole denied based entirely or in part on the crime itself (§2402(c)(1)), both corroborates and validates the expert's conclusion in each individual case and also provides an overwhelming and irrefutable sample size from which even a non expert can confidently draw conclusions.

DISCUSSION

Although the evidence establishes that the Board frequently says parole is denied "first," "foremost," "primarily," or "mainly," because of the commitment offense, this statement of primacy or weight is not relevant to the question now before the Court.

Petitioners acknowledge that the Board generally also cites other reasons for its decision. The question before this Court, however, is not whether the commitment offense is the primary or sole reason why parole is denied -- the question is whether the commitment offense is labeled a "particularly egregious" and thus could be used under *Dannenberg*, primarily or exclusively to deny parole.

The evidence proves that in a relevant and statistically significant period where the Board has considered life term offenses in the context of a parole suitability determination, every such offense has been found to be "particularly egregious" or "especially heinous, atrocious or cruel."[2] This evidence conclusively demonstrates that the Board completely disregards the detailed standards and criteria of §2402(c). "Especially" means particularly, or "to a distinctly greater extent or degree than is common."[3] (EC § 451(e).) By simple definition the term "especially" as contained in section 2402(C)(1) cannot possibly apply in 100% of cases, yet that is precisely how it has been applied by the Board. As pointed out by the Second District Court of Appeal, not every murder can be found to be "atrocious, heinous, or callous" or the equivalent without "doing

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[2] In a single case out of the 2690 that were examined Petitioner has conceded that the Board did not invoke §2402(c)(1). This Court finds that concession to be improvidently made and the result of over caution. When announcing the decision at the initial hearing of S. Fletcher (H-10330) on 4/6/06, the commissioner did begin by stating "I don't believe this offense is particularly aggravated..." However the commissioner proceeds to describe the crime as a drug deal to which Fletcher brought a gun so "we could say there was some measure of calculation in that." The commissioner continued by observing that the reason someone would bring a gun to a drug transaction was to make sure things went according to their plan "so I guess we can say that that represents calculation and perhaps it's aggravated to that extent." As is the Board's standard practice, by using the word 'calculated' from §2402(c)(1)(b) the Board was invoking that regulation. Certainly if Mr. Fletcher had brought a habeas petition Respondent's position would be that there is 'some evidence' supporting this. The ambiguity created by the commissioner's initial statement was cleared up several pages later when he announces that "based upon the crime coupled with ..." parole was denied for four years. (See *In re Burns* (2006) 136 Cal.App.4th 1318, 1326, holding §2402(c)(1) criteria are necessary for a multi-year denial.)

violence" to the requirements of due process. (In re Lawrence (2007) 150 Cal.App.4th 1511, 1557.) This is precisely what has occurred here, where the evidence shows that the determinations of the Board in this regard are made not on the basis of detailed guidelines and individualized consideration, but rather through the use of all encompassing catch phrases gleaned from the regulations.

THE BOARD'S METHODS

Because it makes no effort to distinguish the applicability of the criteria between one case and another, the Board is able to force every case of murder into one or more of the categories contained in §2402(c).

For example, if the inmate's actions result in an instant death the Board finds that it was done in a "dispassionate and calculated manner, such as an execution-style murder." At the same time the Board finds that a murder not resulting in near instant death shows a "callous disregard for human suffering" without any further analysis or articulation of facts which justify that conclusion. If a knife or blunt object was used, the victim was "abused, defiled, or mutilated." If a gun was used the murder was performed in a "dispassionate and calculated manner, such as an execution-style murder." If bare hands were used to extinguish another human life then the crime is "particularly heinous and atrocious."

Similarly, if several acts, spanning some amount of time, were necessary for the murder the Board may deny parole because the inmate had "opportunities to stop" but did not. However if the murder was

[3] Princeton University World Net Dictionary (2006).

accomplished quickly parole will be denied because it was done in a dispassionate and calculated manner and the victim never had a chance to defend themselves or flee. If the crime occurred in public, or with other people in the vicinity, it has been said that the inmate "showed a callous disregard" or "lack of respect" for the "community." However if the crime occurs when the victim is found alone it could be said that the inmate's actions were aggravated because the victim was isolated and more vulnerable.

In this manner, under the Board's cursory approach, every murder has been found to fit within the unsuitability criteria. What this reduces to is nothing less than a denial of parole for the very reason the inmates are present before the Board - i.e. they committed murder. It is circular reasoning, or in fact no reasoning at all, for the Board to begin each hearing by stating the inmate is before them for parole consideration, having passed the minimum eligible parole date based on a murder conviction, and for the Board to then conclude that parole will be denied because the inmate committed acts that amount to nothing more than the minimum necessary to convict them of that crime. As stated quite plainly by the Sixth District: "A conviction for murder does not automatically render one unsuitable for parole." (*Smith, supra*, 114 Cal.App.4th at p. 366, citing *Rosenkrantz, supra*, 29 Cal.4th at p. 683.)

In summary, when every single inmate is denied parole because his or her crime qualifies as a §2402(c)(1) exception to the rule that a parole date shall normally be set, then the exception has clearly swallowed the rule and the rule is being illegally interpreted and applied. When every single life crime that the Board